

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.07.2016

Delivered on : 03.08.2016

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

WP.Nos.31619/2015 & M.Nos.1 & 2/2015 & WMP.No.227/2016
and

WP.No.5161/2016 & WMP.No.4532/2016

V.Krishnan
Managing Partner,
Keerthy Travels
Maniakulam Road, Opp.KSRTC,
Palakkad, Kerala State.

... Petitioner in
WP.No.31619/2015

KRN Transport Lorry Operators
represented by its Proprietor
N.Nallathambi, S/o.R.Nalla Gounder
Functioning Office at NV Compound
Bhawani Main Road, NS Patti Post
Sankari West, Salem District,
Tamil Nadu.

... Petitioner in
WP.No.5161/2016

Versus

1.The Secretary
Union of India, Ministry of
Petroleum & Natural Gas,
Government of India, Shastri Bhavan
New Delhi 110001.

2.The Managing Director,
Bharat Petroleum Corporation Limited
Bharat Bhavan, 4&6, Currimbhoy Road
Ballard Estate, Mumbai 400 001.

3.The Regional LPG Manager [South]
Bharat Petroleum Corporation Limited
No.1, Ranganathan Garden, Off:-
11th Main Road, Anna Nagar, Chennai.

.. Respondents in
WP.No.31619/2015

4.The Deputy General Manager
Regional Contract Cell,
Southern Regional Office
Indian Oil Corporation Limited
Marketing Division, 8th Level
Indian Oil Bhawan, No.139,
Nungambakkam High Road
Chennai 600 034.

.. Respondent in
WP.No.5161/2016

Prayer in WP.No.31619/2015: Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records relating to order vide Circular No.BPCL:LPG:PKD:SR:2015-16/03/Coimbatore, dated 26.03.2015 issued by the 3rd respondent and quash the same and direct the 2nd and 3rd respondents to hire trucks for transport of LPG Cylinders from supply location to all the godowns or other premises of the Distributors in the Coimbatore LPG Territory by inviting public tenders in a fair and transparent manner and allot loads at par to all transporters and Distributors.

Prayer in WP.No.5161/2016 Writ petition filed under Article 226 of the Constitution of India praying for a writ of declaration declaring that the conditions that had been laid down in the tender duly called for by the Deputy General Manager, Regional Contract Cell, Southern Regional Office, Indian Oil Corporation Limited, Marketing Division, 8th Level, Indian Oil Bhavan, No.139, Nungambakkam High Road, Chennai 600 034, the respondent herein especially the induction of vehicles of the new origin in the tender irrespective of fixing the time limit at 14 years for the vehicles in order to participate in the tender and similarly fixing the period of contract at 5 years at the rate of 3 years as initial and 2 years as extension are against law, inoperative, unsustainable and ultravires of the Constitution of India and as such they are null and void.

For Petitioner in
WP.No.31619/2015 : Mr.P.V.S.Giridhar
For Petitioner in
WP.No.5161/2016 : Mr.D.Ashok Kumar
For R1 in
WP.No.31619/2015 : Mr.T.L.Thirumalaisamy, CGSC
For RR 2 & 3 in
WP.No.31619/2015 : Mr.M.Vijayan for
M/s.King & Patridge

For Respondent in
WP.No.5161/2016 : Mr.Abdul Saleem

COMMON ORDER

The petitioner in WP.No.31619/2015 challenges the Circular of the 3rd respondent dated 26.03.2015 in respect of the alleged preference given to the Distributors of Liquid Petroleum Gas [LPG]. The petitioner in WP.No.5161/2016 challenges the condition of the Tender Notification dated 15.01.2016 issued by the Deputy Regional Manager, Regional Contract Cell, Office of the Indian Oil Corporation Limited, Chennai-30.

2 The issues arise for consideration in these writ petitions are one and the same and hence, both the writ petitions are disposed of by this common order.

3 The facts leading to the filing of these writ petitions, briefly narrated, are as follows:-

WP.No.31619/2015:-

[A] The petitioner is the Managing Partner of M/s.Keerthy Travels, Palakkad, Kerala State and according to him, he is a Transporter of LPG Cylinders from the Bottling Plant situated in Coimbatore, Kochi and Mangalore for Bharat Petroleum Corporation Limited [BPCL], Bombay-1 and it is a registered Partnership Firm. The petitioner would state that, all along, the contract for transportation of LPG Cylinders, was awarded on the basis of Public Tender and the contracts were awarded strictly on the basis of merit and on the basis of the terms and conditions and in respect of the tender floated for transportation of LPG Cylinders in the year 2012, the petitioner was surprised to note that BPCL had invited tenders only for some locations and other locations were not mentioned in the Tender document and on enquiry, the petitioner came to know that the profitable routes have already been allotted/allocated to the Distributors through Expression of Interest [EOI] and therefore, the remaining non-profitable locations alone are being put up for public tender. According to the petitioner, the bias/preference shown to the Distributors of LPG is in violation of the various Circulars issued by the Central Vigilance Committee and it is also illegal and arbitrary as the Distributors are given liberty to take contract in selective locations without participating in the tender and in the event of their refusal only, the public transporters like the petitioner are provided with the opportunity to participate in the said tender.

[B] It is further stated by the petitioner that fixed expenses such as loading and unloading cylinders both at the plant and at the distribution level, is to be paid by the transporter as per the Tender conditions and the vehicle which runs a longer distance, will have the benefit of more income and

the vehicle which runs for lesser/short distance, will have a limited income and the fixed expenses for both, is same and by giving preference in favour of the Distributors, BPCL is taking the basic price as the Bench Mark Rate/bid by which the transporters in the tendering process, especially, in respect of the loss making sectors and the same would result in collusion between the officials of BPCL and the Distributors and that apart, a transporter who had to bid in the Public Tender, has to fulfill various conditions and formalities and whereas, the Distributors can bring any vehicle of their choice and their bid is entertained without fulfilling any of the mandatory requirements and general merits. The petitioner, in this regard, had also submitted a representation dated 29.06.2015 to withdraw the impugned Circular and since no response is forthcoming, the petitioner came forward to file this writ petition.

4 Mr.P.V.S.Giridhar, learned counsel appearing for the petitioner would vehemently contend that the award of contracts in favour of the Distributors of LPG Cylinders on the basis of EOI without floating a Public Tender, is per se arbitrary and in gross violation of Article 14 of the Constitution of India, for the reason that the transportation from the Bottling Plant to safe supply locations-most of which are profitable, is totally sought to be excluded from the tendering process and thereafter, floating the tender for transporters for the remaining non - profitable locations is totally unfair, mala fide and discriminatory and has no nexus with the objects that are to be achieved. The said practice would also, apart from arbitrariness and illegality, breed in practice, favouritism and corruption. In sum and substance, it is the submission of the learned counsel appearing for the petitioner that the acts of the respondents 2 and 3 by taking steps to award contracts to the Distributors in Coimbatore LPG territory, who are desirous of or uplifting their own requirements from the supply locations in packed trucks to the end point, to the exclusion of the Transporters solely on the basis of EOI and without floating a Public Tender, is grossly illegal, unjustifiable and arbitrary and thereby, Article 14 of the Constitution of India is violated and therefore, prays for interference.

5 The said writ petition was listed for admission on 07.10.2015 and this Court has ordered notice of motion returnable in eight weeks and granted an order of ad-interim injunction as prayed for and also made it clear that if the respondents proceeded with the tender process, then the interim order granted, will not stand in the way of continuation of the said process.

6 The learned counsel appearing for the petitioner, in support of his submissions, has also placed reliance upon the judgments, reported in

[a] 1993 [1] SCC 445 [Sterling Computers Vs. M/s. M&N Publications Ltd., and others] ;

[b] 2015 MANU SC 1332 [Elektron Lighting Systems Pvt Ltd. And others Vs. Shah Investments Financial Developments and Consultants Pvt Ltd and others] ;

[c] 2007 TN MANU 7071 [R.Shajahan K.R.S. Fuel Station, BPCL & Ors Vs. Union of India, Ministry of Petroleum & The Chief Logistics Manager, Bharat Petroleum Corporation Ltd.] ; and

[d] 2012 [3] SCC 1 [Centre for Public Interest Litigation and others V. Union of India and others].

7 WP.No.5161/2016:-

Mr.D.Ashok Kumar, learned counsel for the petitioner in WP.No.5161/2016, apart from adopting the arguments of Mr.P.V.S.Giridhar, learned counsel appearing for the petitioner in WP.No.31619/2015, would contend that the petitioner is especially aggrieved by the condition prescribed with regard to the age of the vehicles as set out in Clauses No.11, 12, 13 and 14 of the Tender Notification and would submit that in the light of the said conditions, any person, who is in possession of new vehicles, in all probability, will become successful as the vehicles are new one and whereas, the bidders like the General Transporters who had participated in the tender process after complying all the terms and conditions, may not be considered for the reason that the vehicles owned by them, are slightly older, though within the time limit prescribed by BPCL. It is further contended by the learned counsel appearing for the petitioner that even otherwise, the preference/favouritism in favour of LPG Distributors to lift their own stocks from the point of supply to the place of delivery in their vehicles without participating in the tender process, is per se illegal and arbitrary and therefore, the relevant clauses favouring them, have to be quashed and prays for appropriate orders.

8 The respondents 2 and 3 in WP.No.31619/2015 had filed WMP.No.227/2016 for vacating the interim order granted by this Court on 07.10.2015. Mr.M.Vijayan, learned counsel appearing for them had invited the attention of this Court to the counter affidavit filed in support of the said petition and would submit that the packaged LPG transportation contract in respect of Coimbatore region, had expired on 30.11.2015 and the tendering process for hiring packed trucks for transportation of LPG Cylinders from Coimbatore LPG Plant to Tamil Nadu and Kerala markets for the period commencing from 01.12.2015 to 30.11.2017 with an option for extension of further period of one year with the same terms and conditions has been floated and is in progress. BPCL before floating the said tender, wanted to identify the number of Distributors who are willing to transport

their Cylinders for their outlets and accordingly, issued a Letter / Circular dated 26.03.2015 [subject matter of challenge in WP.NO.31619/2015], seeking EOI in the attached format from our LPG Distributor, who are desirous of uplifting their own requirement from the supply location in their packed trucks and also indicated that even if the Distributor who do not own the truck at the time of issuance of Letter of Indent dated 26.03.2015, can also participate under the 'proposed category' and however, within 45 days from the date of issuance of the Letter of Indent [LOI], the Distributor will have to own the truck and produce the same for physical verification and the same age limit is also been prescribed for the said vehicle as that of the vehicle of other transporters and if the dealer did not participate in the said process, they will not be allowed to use the trucks to uplift their own requirement during the pendency of the contract. The petitioner has also expressed reservation in his representation for which a detailed response has also been sent on 23.07.2015, clarifying the position. It is the further submission of the learned counsel appearing for the respondents 2 and 3 that EOI was sought for from the Distributors who would like to uplift their own requirement in their own trucks and they would be offered the Bench Mark Rate published in the tender or the weighted average of the negotiated rate, whichever is lower and after identification of EOI from the Distributor, public tender would be floated for the balance requirement of trucks for cylinder transportation and the said policy is taken to protect the supply of essential commodity like LPG Cylinders, which is in the interest of the customers and public at large and on account of the policy decision that the Distributor have to pay either the Bench Mark Rate or the weighted average of the negotiated rate, whichever is lower, so that the balance and equity is maintained and that the Distributor do not enjoy any unfair price advantage and while framing the said policy, past experience was also taken into account, viz., the transporters have formed Cartels and sought undue advantage by resorting to strikes and bandhs, jeopardizing the distribution of LPG. It is further contended by the learned counsel that insofar as the primordial allegation that the profitable routes have been allocated to the Distributors through EOI and the non - profitable locations are put up for public tender for transportation of motor spirit and high speed diesel, such a policy is already in operation and based on the same, the LPG Bottling Plants are floating tender for packed LPG Transportation after considering EOI from the Distributors and other public sector oil corporations are also adopting the said method.

9 The learned counsel appearing for the respondents 2 and 3 has also drawn the attention of this Court to paragraph No.4 of the counter affidavit and out contend that in respect of the tender floated during the year 2012, the petitioner was not

a successful bidder and during that time also, the very same policy was in operation and the petitioner alleging discrimination on the alleged ground of giving preference in favour of LPG Distributors, had moved the Competition Commission of India and it was also dismissed on 10.04.2013 and since the points urged herein, were also adjudicated by the Competition Commission of India, the grounds raised by the petitioner are wholly untenable and prays for dismissal of the writ petitions with exemplary cost.

10 In response to the said counter affidavit, the petitioner has filed an additional affidavit as well as rejoinder and would contend that the trucks used by the Distributors will fetch more profit margin than the Transporters as they have applied through EOI only for the selective profitable locations, leaving the non-profitable routes to transporters and the same is in violation of Article 14 of the Constitution of India and would further state that the petitioner participated in the tender and the Transport Contract, vide LOI dated 21.04.2016 was awarded for one truck though the other 13 trucks were also eligible and therefore, it cannot be said the petitioner is not an aggrieved persons and prays for allowing of the writ petitions.

11 The respondents 2 and 3 had also filed additional counter affidavit stating that the present writ petitions along with WP.Nos.315, 316, 3066, 3818/2016 were listed together and on that day, the learned counsel sought for time and therefore, the present writ petitions were not taken up for hearing and the learned Judge, after hearing the submissions of the learned counsel appearing for the writ petitioners as well as the respondents, had dismissed the said writ petitions vide common order dated 25.04.2016 and since the same points urged, were adjudicated and rejected, the points now urged by the learned counsel appearing for the petitioners, cannot be considered and prays for dismissal of the writ petitions.

12 This Court has carefully considered the rival submissions and also perused the materials placed before it.

13 It is relevant to extract Clauses No.11 to 16 of the Tender Notification dated 15.01.2016:-

".....

11.Age of the quoted truck shall be as prescribed by Local Laws and in any case shall not exceed 14 years as on the closing date of tender submission from the date of manufacturing as mentioned in RC book and in case date of manufacturing is not entered in RC book, then bidders have to submit the copy of original invoice as a proof to establish the date of

manufacturing of Truck offered. In case original Sale Invoice is not available then Certificate issued by Manufacturers is to be submitted during physical verification of documents.

12. In case any trucks quoted by the bidders are found to be more than 14 years old as on closing date of the tender from the date of manufacturing, then such trucks will be rejected.

13. LPG distributors may offer trucks [any number of Trucks i.e., one or more] as per requirement for their own supplies only and all such trucks should be owned by the LPG Distributor.

- Distributor has to match the established offered L-1 rate for all the earmarked trucks for his own requirement at the first instance. The trucks offered by any Indane Distributor beyond his own requirement shall be treated at par with other tenderer as per the original ranking.
- Such truck/s shall not be utilized for any other Distributor/load and markets.
- In case, truck of Indane Distributor [availing priority preference in induction at L-1 rate for his own requirement and concessional Security Deposit] is withdrawn or non-operational due to any reason and distributor has also offered additional trucks for other than his own requirement [at par with other tenderer], such trucks [equivalent number] shall be utilized for own load transportation at L-1 rate.
- In case Distributor is not willing to match the established offered L-1 rate at the first instance, he will be treated at par with other tenderers as per his original ranking. No priority of induction of trucks and Concessional Security Deposit shall be considered for such Distributors.
- Trucks earmarked for own load transportation at L-1 rate shall have to submit Concessional Security Deposit. However, if a Distributor

offers truck more than own requirement, the Security Deposit at par with other tenderers shall be taken from the Distributor.

14.If during the period of contract, part or full linkage of the distributor is shifted to other supplying location from logistics point of view, then distributor has to shift its own trucks deployed for own load requirement in part or full depending on the linkage to the new supplying source, payment for which will be made at the lowest finalised rates of new supplying source. If such distributors do not shift their trucks as per Corporation's requirement, then the same distributors will be treated as normal tenderer and full security deposit has to be collected from them failing which their trucks will be stopped from operation.

15."LPG Distributor, who owns truck/s and has part utilization of offered truck/s considering own supplies, can form consortium with only one or two other IOC LPG distributors, who are not having trucks and in that event specific terms mentioned in this tender document shall be applicable. Distributor attached to one market or distributor having one customer code or in Corporation's SAP Master data will be treated as one entity and any distributor attached to multiple markets or having difference customer codes in SAP Master data will be treated as a separate entity irrespective of the common name and style of distributorship. One distributor can at most be a part of only one consortium."

16.LPG Distributors desirous to offer trucks more than their own requirement shall fulfill the other tender conditions. These distributors shall earmark the owned trucks as per their requirement for their own supplies and these trucks shall not be used for other transportation work. In case the LPG Distributor not earmarking trucks for their own supplies, the supplies to their distributorship shall be made at the discretion of IOC. These distributors shall be evaluated as general tenderer."

14 A perusal of the above cited tender conditions would disclose that the Distributor has to match the established offered L-1 rate for all the earmarked trucks for his own requirement at the first instance and any trucks offered beyond his own interest, shall be considered at par with other tenderers as per the original ranking and in case the distributor is not willing to match the established L-1 rate at the first instance, he will be considered at par with the other tenderers as per his original ranking and no priority of induction of trucks will be given.

15 A careful analysis of the above cited tender conditions would disclose that the tenderers who want to lift their own stocks from the Bottling Plant to the place of delivery-their distribution point, they may exhibit or file EOI and they have to match the offered L-1 rate for the earmarked trucks for their own requirement at the first instance and if he is offering the trucks more than his own requirement, then he will be treated at par with the other tenderers as per his original ranking and no priority of induction of trucks and concessional security deposit shall be considered for such distributors.

16 It is the stand of the respondents 2 and 3 that in the event of the Distributors giving EOI, for the purpose of lifting their own requirement through their own trucks, they would be offered the Bench Mark rate, published in the tender or the weighted average of the negotiated rate whichever is lower and after such an identification, the public tender would be floated for the balance requirement of trucks for cylinder transportation.

17 It is pertinent to point out at this juncture that if the distributors wants to lift their stocks for allotment, as per the above cited policy/EOI, they are permitted to lift the stocks from the point of supply to the point of destination in which they are running Gas Agency. If the contention put forth by the respective learned counsel for the petitioners is accepted, the LPG Distributors cannot be given any choice to lift their own stocks and all stocks/LPG Cylinders have to be transported only through the trucks offered by the transporters.

18 In the considered opinion of the Court, such a stand taken by the writ petitioners are wholly untenable and also belies common sense and logic. The LPG Distributors in order to effect speedy and timely delivery, requires sufficient stock of LPG Cylinders at the Distribution points / their Agency and therefor, they will be interested in lifting the stock without any lapse of time. The conditions for Dealership/Distributorship are also stringent and any violation

visit the concerned Distributor with a grave consequences including the cancellation of the Dealership and therefore, they will be naturally interested in rendering quality and timely service to their customers/consumers. The provision of LPG is an essential service as almost all of the household use the LPG stove for cooking and other allied purposes.

19 It is also the stand of the respondents 2 and 3 that in the past, the transporters had formed cartels and also indulged in strikes and bandhs, resulting in disruption of supply for quite number of days and having burnt their fingers, a fair and scientific decision has been taken to permit the LPG Distributors to lift their own stocks and such a practice is also already there for lifting motor spirit and high speed diesel and on account of the good experience gained, it is introduced for distribution of LPG Cylinders also.

20 The Court is also of the view that by asking the Distributors to submit their Expression of Interest [EOI] for lifting the delivery of LPG Cylinders to their own distribution from the Bottling Plant, is beneficial to the consumers for the reason that it shall ensure proper and timely delivery of LPG Cylinders to them after booking it and therefore, it cannot be faulted with.

21 The learned counsel for the petitioners have also made a valiant attempt that since the natural gas is an essential commodity and that the ownership of and right to regulate or allow to fix price comes under the Public Trust Doctrine and the respondents ought to have given the transporters a level playing field and by permitting the LPG Distributors to submit their EOI, has violated the said Public Trust Doctrine. However, this Court is of the view that the said submission lack merits and substance for the reason that the said policy decision has been taken solely for the benefit of consumers and the Distributors by lifting their own stocks, shall ensure timely delivery to the consumers and the said practice is also in vogue in respect of the distribution of motor spirit and high speed diesel.

22 Next, this Court considers the decisions relied on by the learned counsel for the petitioner in WP.No.31619/2015.

[i] In the decision reported in 1993 [1] SCC 445 [Sterling Computers Vs. M/s. M&N Publications Ltd., and others], it was contended that there was no justification on the part of Mahanagar Telephone Nigam Limited [MTNL] by entering into supplementary agreement with no apparent benefit to MTNL without inviting fresh tenders from the intending persons to perform the same job for the next five years. The Hon'ble Supreme Court of India, has taken into consideration series of decisions rendered

by it and has observed that "in contracts having commercial element, some more discretion has to be considered by the authorities giving them liberty to assess the overall situation for the purpose of taking decision as to whom the contract to be awarded and on what terms, so that they may enter into contract with persons, keeping an eye on the augmentation of the revenue and it is not possible for the Courts to question and adjudicate every decision taken by an authority because many of the Government undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts..... Even while taking decision in respect of commercial transactions, a public authority must be guided by relevant consideration and not by irrelevant ones. If such a decision is influenced by extraneous considerations, which it not ought to have taken into account, the ultimate decision is bound to be vitiated, even if it is established that such a decision is taken without bias. There is nothing paradoxical in imposing legal limits on such authorities by Courts even in contractual matters because the whole concept of unfettered discretion is inappropriate to a public authority, who is expected to exercise such powers only for public good."

[ii] In the decision reported in 2015 MANU SC 1332 [Elektron Lighting Systems Pvt Ltd. And others Vs. Shah Investments Financial Developments and Consultants Pvt Ltd and others], the tenders for replacement of existing street lights by LED fittings with refurbishment of street light infrastructure on Build, Operate and Transfer [BOT] basis came up for consideration and once again, placing reliance on various decisions rendered by it reported in 2014 [3] SCC 493 [Sanjay Kumar Shukla V. Bharat Petroleum Corporation Limited] ; 1994 [6] SCC 651 [Tata Cellurlar V. Union of India] ; 2000 [2] SCC 617 [AIR India Limited V. Cochin International Airport Ltd and others] ; and 2007 [14] SCC 517 [Jagdish Mandal V. State of Orissa and others] , the Hon'ble Supreme Court of India has observed on facts and expressed that if the offer relating to advertising rights was uncalled for an severable and not a part of the work for which the tender was floated.

[iii] In 2007 TN MANU 7071 [R.Shajahan K.R.S. Fuel Station, BPCL & Ors Vs. Union of India, Ministry of Petroleum & The Chief Logistics Manager, Bharat Petroleum Corporation Ltd.], similar issue arose for consideration. The Court found that a new system has been introduced limiting number of trucks and also insistence for National Permit and therefore, quashed the Tender Notification. In the case on hand, as already pointed out, except the fact that the tenderers are permitted to lift their own stocks to their destination, the other terms and

conditions remained the same and the procedural aspects have been clearly spelt out in paragraphs 3 and 5 of the counter affidavit filed by the respondents 2 and 3 in WP.No.31619/2015.

[iv] In the decision reported in 2008 [3] CTC 675 [ION Exchange Waterleau Ltd., Vs. Commissioner, Madurai Municipal Corporations, Madurai 625002], this Court has held that:-

"19. Needless to say, it is a settled principle that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. The courts are always hesitant to interfere with the administrative policy decision and in rarest of rare occasions, if it is arbitrary, discriminatory, mala fide or actuated by bias, the Courts can interfere or otherwise the Courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wise or logical. In the decision in Tata Cellular case, the Constitution Bench of the Supreme Court has authoritatively held that the principle of judicial review in the matter of contract would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State and the power to refuse the lowest or any other tender is always available to the Government. The right to choose cannot be considered to be an arbitrary power. Ofcourse, if the said power is exercised for any collateral purpose, the exercise of that power will be struck down. In a commercial transaction, the State can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, provided the tender conditions permit such a relaxation. Even when some defect is found in the decision-making process, the Court has to necessarily exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it

comes to a conclusion and is satisfied that overwhelming public interest requires interference, the Court should interfere. Otherwise, the larger public interest will prevail upon the individual's interest."

[v] In Mala Binda Express Carrier and Another v. North-East Frontier Railway and Others reported in AIR 2014 SC 390:(2014) 3 SCC 760:(2013) 8 MLJ 540, the Hon'ble Supreme Court held as follows:-

"9. Suffice it to say that in the matter of award of contracts the Government and its agencies have to act reasonably and fairly at all points of time. To that extent the tenderer has an enforceable right in the court which is competent to examine whether the aggrieved party has been treated unfairly or discriminated against to the detriment of public interest. (See Meerut Development Authority v. Assn. of Management Studies (2009) 6 SCC 171: (2009) 2 SCC (Civ) 803 and Air India Ltd v. Cochin International Airport Ltd. (2000) 2 SCC 617: (2000) 1 SCR 505)".

[vi] In Michigan Rubber (India) Limited v. State of Karnataka and Others reported in AIR 2012 SC 2915:(2012) 8 SCC 216:LNIND 2012 SC 479, the Hon'ble Supreme Court held 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 the 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 the 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 a 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 the negative, then there should be no interference under Article 226".

23 This Court, after taking into consideration the legal principles/ratio enunciated in Tata Cellular's case and Jagadish Mandal's case [cited supra], pose itself the following questions:

[a]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 or irrational that the Court can say "the decision is such that no responsible authority acting reasonably and in accordance with the relevant laws could have reached".

[b]Whether public interest is affected.

24 This Court has considered all the relevant materials placed before it and arrived at an answer that the EOI given to the LPG Distributors to lift their own stocks to their point of delivery cannot said to be arbitrary, irrational, illegal and is having nexus with the object sought to be achieved and by adopting the policy, the beneficiaries are the consumers who will get timely and quality service. The Distributors also cannot be prevented from lifting their own stocks and the policy enumerated in paragraph No.3 of the counter affidavit also protects the interest of the Transporters also.

25 Insofar as the age of the vehicle is concerned, the same condition is prescribed that the age of the truck quoted must not exceed 14 years of the contract period and it is equally applicable to LPG Distributors also through EOI. The submission made by the respective learned counsel for the petitioners that the new vehicle will be preferred, in the considered opinion of the Court, it is merely a surmise as the discretion is left to the tender floating authorities to act in public interest and also in the best interest of the consumers. It is also the submission of made on behalf of the petitioners that they will be given non - profitable routes, after considering the EOI submitted by the LPG Distributors. This Court has already answered that there is nothing wrong in adopting the policy of permitting the LPG Distributors in lifting their own stocks from the Bottling Plant to the point of delivery as it would better serve the interest of the consumers and the petitioners being commercial entities, cannot always expect to earn profits and vagaries of business include profit and loss also and therefore, they cannot insist that by participating in a commercial venture, they should always make profit only.

26 Similar points urged in WP.Nos.315, 316, 3066 and 3818/2016, had also ended in dismissal, by a common order dated 25.04.2016 and no materials have been produced before this Court to show that those orders have been put to challenge and interim orders have been obtained.

27 In the light of the above facts and circumstances, settled legal position and the reasons assigned above, this Court is of the considered opinion that these writ petitions deserve dismissal. Accordingly, both the writ petitions are dismissed. No costs. Consequently, interim order are vacated and the connected miscellaneous petitions are also dismissed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The Secretary
Union of India, Ministry of
Petroleum & Natural Gas,
Government of India, Shastri Bhavan
New Delhi 110001.
- 2.The Managing Director,
Bharat Petroleum Corporation Limited
Bharat Bhavan, 4&6, Currimbhoy Road
Ballard Estate, Mumbai 400 001.
- 3.The Regional LPG Manager [South]
Bharat Petroleum Corporation Limited
No.1, Ranganathan Garden, Off:-
11th Main Road, Anna Nagar, Chennai.
- 4.The Deputy General Manager
Regional Contract Cell,
Southern Regional Office
Indian Oil Corporation Limited
Marketing Division, 8th Level
Indian Oil Bhawan, No.139,
Nungambakkam High Road
Chennai 600 034.

+1 cc to M/s.T.L.Thirumalaisamy, advocate,sr.43824

+1 cc to M/s.King & partridge, advocate,sr.43853

+1 cc to Mr.Abdul Saleem, advocate,sr.44286.

nm(co)
krd 18/8

WP.Nos.31619/2015 & 5161/2016