

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 12.02.2016

Pronounced on : 29-02-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 4275 of 2016

and

M.P. No. 3623 and 3624 of 2015

Southern Region Bulk LPG Transport Owners
Association
represented by its Secretary
N.R. Karthik
No.87, Salem Road
Namakkal - 637 001

... Petitioner

Versus

1. Hindustan Petroleum Corporation Limited
represented by its Deputy General Manager-LPG
(South Zone), 1st Floor
Thalamuthu Natarajar Building
Egmore, Chennai - 600 008
2. Hindustan Petroleum Corporation Limited
(A Government of India Enterprise)
Central Procurement Organisation - Marketing
represented by its Senior Category Manager-CPO (Marketing)
Mumbai Refinery
Chembur, Mumbai - 400 074

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari calling for the records comprised in Tender No.15000089-HD-10157 dated 22.01.2016 on the file of the second respondent, calling for additional tank, trucks for South Central Zone for Transportation of Bulk LPG, quash the same.

For Petitioner : Mr. R. Krishnamoorthy, Senior Advocate
for Mr. R. Karthikeyan

For Respondent : Mr. Abdul Saleem

ORDER

The petitioner has come forward with this writ petition assailing the tender notification dated 22.01.2016 issued by the second respondent, by which, the second respondent invited applications for supply of additional tank, trucks for South Central Zone for Transportation of Bulk Liquefied Petroleum Gas (in short LPG).

2. The case of the petitioner, which are essential for disposal of this writ petition is as follows:-

(i) The petitioner is a registered association registered under the Tamil Nadu Societies Registration Act, 1975 which was formed to promote and protect the welfare of their Members, who are Tank Truck Owners which are designed solely for the purpose of transporting LPG. According to the petitioner, the Oil Corporations in India such as Indian Oil Corporation Limited, Bharat Petroleum Corporation Limited and Hindustan Petroleum Corporation Limited dealing with various oil products and suppliers of LPG invited sealed tenders during 2014 for transportation of bulk LPG by road zone-wise namely Northern Zone, Eastern Zone, Western Zone, Southern Zone and North-East Zone. The period of contract was for three years from 01.11.2014. The petitioner association possessing Tank Trucks had participated in the tender and the tender of the petitioner association was accepted for the rates as prescribed by the first respondent. The members of the petitioner association have been supplying the Tank Trucks as required in the work order. According to the petitioner, in clause 20 of the notice inviting e-tender, the corporation reserved it's right to negotiate with the bidders in case of requirement of tank truck was not met from the established L-1 bidder. The above clause also provided that negotiations/counter-offer exercise will be conducted with the balance bidders in the original order of ranking as mentioned in the evaluation criteria of tender to the full tank truck requirement is met. As per the general terms and conditions of tender, the requirement of the first respondent was 843 tank trucks. As per clause 4 (ii) (g) if the full requirement of tank trucks was not met, the Corporation reserved it's right to accept more trucks at L1 rates from the bidders in the original order of ranking. Thus, if the first respondent has any further requirement of additional tank trucks, they can only negotiate with the bidders seeking for additional tank trucks. Further, as per clause 24 of the general terms and conditions of the tender, if, during the period of contract, due to business requirement, the corporation decides to hire more tank trucks over and above the tank trucks accepted in the tender, the contracting corporation would be free to hire additional trucks from the existing contractors at a rate not higher than the existing rates and the trucks so hired should not be running under contract with any other corporation.

(ii) According to the petitioner association, in anticipation of such additional requirement, their members have kept additional trucks ready to meet any such situation. In fact, during November 2015, the first respondent also requested the successful bidders for additional tank trucks and the petitioner association has provided 80 additional tank trucks to meet out the requirements of the first respondent/Corporation.

(iii) While the facts are so as stated above, one of the oil Corporations namely Indian Oil Corporation Limited - Eastern Region invited e-tenders on 21.07.2015 indicating the requirement of additional tank trucks without calling the existing bidders for negotiations. Challenging the validity of the same, Bulk LPG Transport Contractors Association (West Bengal), Kolkatta and

others have filed WP No. 18564 (W) of 2015 before the Kolkatta High Court. Yet another writ petition in WP No. 30283 (W) of 2015 was filed by one Satish Kumar of Visakapattinam. Both the writ petitions were taken up for hearing and on 10.08.2015 and 23.12.2015, interim stay was granted in the above two writ petitions. Aggrieved by the same, Indian Oil Corporation Limited has filed an appeal in C.A.N. No. 8821 of 2015 before the Division Bench of the Kolkatta High Court and it was dismissed.

(iv) The grievance of the petitioner association is that the second respondent called for fresh tenders for transportation of bulk LPG by road by classifying certain areas which were allotted to the petitioner association as South Central Zone. The areas covered in the so called South Central Zone are very much covered by the tender floated for the Southern zone. Therefore, according to the petitioners, the impugned tender notification has been issued only to deprive the petitioner association from participating in the tender.

3. The learned Senior counsel for the petitioner submits that the respondents corporation has already entered into agreements with the petitioner association as well as other successful bidder in respect of Southern Zone and have a subsisting contract with them for transportation of bulk LPG by road, including the areas which have now been re-classified as South Central Zone. Therefore, according to the learned senior counsel for the petitioner, the impugned tender notification amounts to calling for fresh tenders for additional tank trucks in violation of the clauses 20 and 24 of the tender notification in which the petitioners were awarded the contract. The issuance of impugned tender notification covering the areas which are already covered in the earlier tender notification and the contract awarded to the petitioner association which is in force is arbitrary. If the respondent intending to get additional supplies of tank trucks, as per clauses incorporated in the tender awarded in favour of the petitioner, the respondents have to exhaust their requirement with the petitioners and in case the petitioners are unable to meet the demand made by the corporation, then the corporation can proceed with a fresh tender. In the present case, the petitioners were never asked to quote or supply additional tank trucks for supply of bulk LPG by road and therefore, it is submitted by the learned Senior counsel for the petitioner that the impugned tender notification is arbitrary and uncalled for. It is mainly contended by the learned senior counsel for the petitioner that the impugned tender notification has been purportedly issued to cover the areas which are classified as South Central Zone. According to the learned senior counsel for the petitioners, in the past, the corporation has not flouted any tender for the so-called South Central Zone and it would only mean that additional tank trucks are required for southern zone for which already tender was flouted and awarded in favour of the petitioner association. Therefore, the present attempt on the part of the corporation in creating a new zone called South Central Zone would only deprive and disentitle the petitioner association from participating the tender.

4.(i) On the other hand, the learned standing counsel appearing for the respondents corporation, relying on the counter affidavit filed by the corporation, would contend that the writ petition is not maintainable, either in law or on facts. According to the counsel for the respondents, the impugned tender pertains to South Central Zone for which the earnest money deposit has to be remitted before the office of the South Central Zone at Vishakapattinam and the tender documents also clearly stipulate that the jurisdiction shall vest with the Courts at Hyderabad. Therefore, the learned standing counsel mainly contend that the writ petition is not maintainable before this Court or this Court has jurisdiction to entertain this writ petition.

(ii) It is further submitted that the writ petition filed by the petitioner association is not maintainable. Even assuming that the corporation has breached some of the clauses incorporated in the tender awarded in favour of the petitioner, the re-course available to the petitioner is only to invoke the arbitration clause contained therein and the writ petition before this Court is not maintainable.

(iii) The learned counsel for the respondents would submit that it is not as though South Central Zone has been created newly to deprive the right of the petitioners. Even in the year 2007-2008, for administrative convenience, two additional zones were created namely North Western Zone and South Central Zone. According to the learned counsel for the respondents, the earlier tender notification for transportation of bulk LPG by road was a common tender for all the four oil companies relating to North, South, East and West Zone. In view of the same, the respondents corporation has included Ananthapur, Kurnool and Cudappah which are comprised in the South Central Zone under the South Zone in the said tender. The destination locations in the earlier tender did not include Cherlapally, Kondapally and Rajamundry, which forms part of South Central Zone. Therefore, it is not as though South Central Zone was created during the subsistence of the contract with the petitioner association, but it was created even during 2007-2008 for better administrative convenience. It is further stated by the learned counsel for the respondents that locations like Cherlapalli and Kondapalli were part of erstwhile South Zone and Rajamundry was part of erstwhile East Zone, but as there was no requirement of tank trucks for these locations, earlier, they were not included in the tender.

(iv) As per the earlier tender notification, the corporation has indicated their requirement for 843 tank trucks. Subsequently, there has been a sudden increase in demand by 10% resulting in shortage of bulk LPG Tanker Truck in South Zone. The supplies to Cherlapalli and Kondapally LPG plants was through pipeline from Visakapattinam, hence, the volume for Cherlapalli and Kondapally was not taken in to account in South Zone projection in the earlier tender. However, due to reduced capacity of Vizag-Secunderabad Pipeline, additional tank truck requirement of Cherlapalli and Kondapally have to be met. Therefore, to meet the growth till commissioning of pipeline, 165 additional tanker trucks are required.

(v) It is brought to the notice of this Court by the learned standing counsel for the respondents that even while issuing the tender notification, which is impugned in this writ petition, as per clause 24 of the general terms and conditions of the previous tender notification, the petitioners were called upon to provide 165 tanker trucks to meet the additional demand. In this context, on 10.09.2015, the corporation wrote a letter for which a reply was sent by the petitioner stating that they could provide only 84 tanker truck load as against the demand of 165. In other words, the petitioners could not meet the demand made by the respondents in full. Therefore, it was decided to flout the tender notification, which is impugned in the writ petition for 172 tanker truck loads. The petitioners, having failed to fulfil the supply of requisite tanker trucks, are estopped from filing the present writ petition.

(vi) The learned counsel for the respondents also submits that the petitioners are not in any way restrained or prohibited from participating in the present bid. Earlier, when there was additional requirement of 84 tank trucks, the petitioner was called upon to supply such additional requirement and they are supplying the same. It is mainly contended that the price band for the present bid relating to South Central Zone is on par with other three zones, which is less than the price offered for South Zone and therefore, the petitioners are not willing to participate in the tender. Thus, the corporation has exhausted clause 4 (ii) (g) of the earlier tender notification by getting additional supply from the petitioner association, while so, it cannot be said that the impugned notification is arbitrary.

(vii) As far as the decision rendered by the Kolkatta High Court is concerned, it is submitted by the learned counsel for the respondents that the Court had granted interim stay on finding that the corporation has breached it's own terms and conditions. In the present case, there is no breach of any of the terms and conditions and therefore, the decision rendered by the Kolkatta High Court has no bearing or relevance to the facts of this case.

(viii) By relying upon Clause 22 of the contract agreement between the petitioner association and the corporation, the learned counsel for the respondents would contend that nothing contained in the agreement shall prevent the corporation from engaging any other transporter to carry out the transportaiton work similar to the work entrusted to the transporters under this contract. Therefore, according to the learned counsel for the respondents, the corporation reserved their right to engage any other contractor when situation warrants. This is more so that the petitioner association could not meet the demands made by the respondent corporation to supply 165 additional tanker truck and therefore, the learned counsel for the respondents justify the tender flouted by the respondents, which is impugned in this writ petition.

(ix) With regard to jurisdiction, the learned counsel for the respondents relied on the decision of the Honourable Supreme Court in (Bareilly Development Authority and another vs. Ajai Pal Singh and others reported in (1989) 2 Supreme Court Cases 116 wherein in para No.22, it was held as follows:-

"22. There is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of The Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple - Radhakrishna Agarwal vs. State of Bihar; Premji Bhai Parimar vs. Delhi Development Authority and DFO vs. Biswanath Tea Company Limited.

(x) Reliance was also placed on the unreported decision of this Court in the order dated 25.08.2011 in WP No. 13950 of 2011 in the case of M/s. SAARG RR India Limited, rep. by its Authorised Signatory, Mylapore, Chennai vs. Chairman and Managing Director, Oil and Natural Gas Corporation Limited, Mumbai and another) wherein this Court held as under:-

"36. In National Textile Corporation Limited vs. Haribox Swalram reported in 2004 (9) SCC 786, referring to earlier cases, this Court stated that:

12.1. ...the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained."

and thereafter, ultimately, held as here under:-

37. From the aforesaid discussion and keeping in view the ratio laid down in catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action" nothing less than that".

The Principle laid down by the Honourable Apex Court in the decision cited supra, makes it crystal clear that for the purpose of deciding the issue of constituting the cause of action, one has to consider the pleadings of the respective parties and the facts pleaded should constitute a material, essential or integral part of the cause of action and even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have the territorial jurisdiction to entertain the petition."

(xi) The learned counsel for the respondents also relied on the decision of the Division Bench of this Court in the case of (The Tamil Nadu Outdoor Advertising Association, rep. by its Secretary, Thiru. A.G. Nayagam, Chennai - 14 vs. Government of Tamil Nadu, rep. by its Secretary, Municipal Administration and Water Supply Department, Chennai and nine others) 2001 (2) CTC 103 to contend that a writ petition filed by an Association challenging violation of fundamental right to carry on business, is not maintainable. The relevant portion of the decision of the Division Bench is extracted hereunder:-

"44. Even Art. 19, sub-clauses (a) to (e) contemplates the natural persons. Though the word citizen has not been defined under Art. 19, its meaning in the context of Art. 19 must be found out. While doing so, the Hon'ble Judges of the Apex Court, in the decision in S.T.Corp'n. of India v. Commercial Tax Officer, AIR 1963 S.C. 1811, have held as follows:-

'We must, therefore, hold that these two provisions are completely exhaustive of the citizens of this country and these citizens can only be natural persons. The fact that corporations may be nationals of the country for purposes of international law will not make them citizens of this country for purposes of municipal law or the Constitution. Nor do we think that the word "citizen" used in Article 19 of the Constitution was used in a different sense from that in which it was used in Part II of the Constitution. The first question, therefore, must be answered in the negative."

45. Following the earlier decisions of the Supreme Court, the Hon'ble Judges of the Supreme Court in the decision in Divisional Forest Officer v. Bishwanath Tea Co. Ltd., , while dealing with the right of a company to sustain the writ petition on the basis of violation of fundamental right claimed under Article 19(1)(g) of the Constitution of India; has held as follows:-

"The respondent not being a citizen was not entitled to complain of breach or violation of fundamental right under Art. 19(1)(g). (See State Trading Corporation of India Ltd. v. The Commercial Tax Officer Vishakhapatnam, and Tata Engineering and Locomotive Co. v. State of Bihar or . However, the shareholders of a company can complain of infringement of their fundamental rights (See Benefit Coleman and Co. v. Union of India, . Such is not the case pleaded. Therefore the writ petition on the allegation of infringement of fundamental right under Art. 19(1)(g) at the instance of respondent company alone was not maintainable.

46. Recently, following the above said decision the Division Bench of this Court in the decision in Seaways Shippings Ltd. v. The Board of Trustees of the Port of Madras Port, 1999 (3) CTC 318, has held as follows:-

"49. The learned senior counsel for the third respondent Mr.Habibullah Badsha also pointed out a technical snag as regards Article 19(1)(g) by referring to a decision of the Supreme Court reported in The Divisional Forest Officer v. Bishwanath Tea Co. Ltd., . He pointed out that this petition was only by a company and not by a citizen and, therefore, technically the petitioner could not argue of any violation of Article 19(1)(g) as that right was available only to a citizen and not to a company. The argument is undoubtedly correct."

47. Mr.K.Subramanian, learned Senior counsel appearing for the respective petitioners has relied on the decisions in A.B.S.K.Sangh (Rly.) v. Union of India, in T.N.P.D.O.Association v. Secretary to Government of India, T.N.R.D. & L.A. Department, AIR 1989 Had. 224 and in Umeshchand v. Krishi Upandan Mandi Samiti, , to sustain his submission that the association can sustain the writ petitions. There cannot be any doubt that the associations can sustain the writ petitions. As stated already, the Associations have filed the writ petitions on the ground that their fundamental rights guaranteed under Article 19(1)(g) of the Constitution have been violated. The above cited decisions are not answer to the issue in question. On the other hand, in view of the direct decisions of the Apex Court, the writ petitions filed by the Associations, partnership firms, business concerns and companies on the basis of violation of fundamental rights cannot be sustained as they are not citizens. So, those writ petitions are liable to be dismissed on these grounds also.

(xii) Relying on the above decisions, the learned counsel for the respondents would submit that when the petitioner association complains of violation or breach of terms and conditions governing the contract between them, which inter alia affected their fundamental right to earn their livelihood, such dispute cannot be adjudicated by this Court under Article 226 of The Constitution of India and consequently, the writ petition deserves to be dismissed.

5. The petitioner association has filed a reply affidavit to the counter affidavit filed by the corporation reiterating and re-affirming the contents contained in the affidavit filed in the writ petition. It is mainly stated in the reply affidavit that the impugned tender notification pertains to the areas which are already covered by the earlier tender

notification except Rajamundry. The other areas covered in the earlier tender notification have been covered in the present tender notification as well and therefore, the respondents cannot arbitrarily classify a location as South Central Zone. The petitioner was never called upon to supply additional 165 tanker truck, as alleged in the counter. In any event, the requirement to supply additional tanker truck was never discussed or put forward to the petitioner and therefore, the order passed by the Kolkatta High Court is very much applicable to the case on hand. According to the learned Senior counsel for the petitioner, it was agreed by the corporation that 84 trucks would be sufficient to meet the need that arose during September 2015 and the period of such requirement comes to an end by 31.03.2016, whereas, the present tender notification is for transportaiton of LPG from 01.04.2016 to 31.10.2017 and therefore, there is a clear violation of clause 24 of the tender notification awarded in favour of the petitioner.

6. In support of his contentions, learned Senior counsel for the petitioner relied on the decision of the Honourable Supreme Court in the case of (Nawal Kishore Sharma vs. Union of India and others) reported in (2014) 9 Supreme Court cases 329 wherein in para Nos. 16 and 17, it has been held as follows:-

"16. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction.

20. We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscles disease). As a result, the Shipping Department of the Government of India issued an order on 12.4.2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim

for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the District of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, appellant was suffering from serious heart muscles disease (Dilated Cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation.

7. Relying on the above decision, the learned Senior counsel for the petitioner would contend that when part of cause of action arises within the territorial jurisdiction of this Court and the authority against whom the writ is sought to be issued is located outside the jurisdiction of this Court and if it is shown that the petitioner's legal right has been infringed by the respondents within the territorial limit of this Court, a Mandamus can be issued and this Court has jurisdiction to entertain this writ petition. The petitioner association can very well maintain this writ petition especially when the writ petition has not been filed questioning the legal injury sustained by it's members, on the other hand, the petitioner itself participated in the earlier tender notification as an Association for and on behalf of it's members and therefore the petitioner can very well file this writ petition questioning the correctness of the impugned tender notification.

8. I heard the learned senior counsel for the petitioner as well as the learned standing counsel for the respondents. I perused the materials made available including the counter affidavit and the additional typed set of papers filed by the respondents. In the light of the submissions made on behalf of both sides, the following questions arise for consideration by this Court in this writ petition viz., (i) whether the respondent corporation has breached the terms and conditions of the contract envisaged in the tender notification awarded in favour of the petitioner association during September 2014 and (ii) whether the present writ petition is maintainable by the petitioner association. For the purpose of adjudicating the above questions, it would be just and necessary to quote Clauses 4 (g) and 24 of the tender notification flouted by the respondent corporation during September 2014. Clauses 4 (g) and 24 reads as follows:-

"4. Evaluation of Tenders:-

(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.....

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 private parties/companies and subject to other terms and conditions which the corporation may stipulate for the purpose.

9. As per clause 24 referred to above, it is no doubt true that the respondent corporation has to exhaust and avail the services of the existing transporters if they have any additional requirement over and above the contracted tank trucks subject to condition that such tank trucks to be offered to the corporation should not be running in any other contract with any other corporation. By relying on the above clause, it is emphatically stated by the learned Senior counsel for the petitioners that the respondents breached Clause 24 of the contract and on this ground, the impugned tender notification has to be set aside.

10. On the other hand, the learned counsel for the respondents would contend that clause 24 of the earlier contract with the petitioner has nothing to do with the present tender notification inasmuch as it relates to a separate zone called South Central Zone and the locations or areas for which tanker trucks are required by the corporation have not been included in the present tender notification or it was not part of the earlier contract with the petitioner. Therefore, according to the learned counsel for the respondents, the question of breach of clause 24 does not arise at all.

11. As per the counter affidavit of the respondents, the South Central Zone was created even during 2007-2008 for administrative convenience by the respondents. It is not as though South Central Zone was created by the respondents recently only for the purpose of depriving the petitioners right to get additional contractual work. It was an existing zone, as could be seen from the counter affidavit of the respondents. So far as the interim order passed by the Calcutta High Court is concerned, I find that the tender was called for a zone which was already in existence. Therefore, the petitioners in that case have questioned the same on the ground that they were not given an opportunity to exercise their option to supply additional requirement. But that is not the situation prevailing in this writ petition. In such circumstances, I am of the view that the reliance placed by the petitioners on the interim order passed by the Kolkatta High Court has no application to the facts of the case on hand.

12. It is seen from the records that even at the time of flouting the present tender notification, the corporation had addressed a letter dated 10.09.2015, which is enclosed in page No.5 of the typed set of papers filed on behalf of the respondent. This letter was addressed to all the South Zone Bulk LPG Transport Contractors. In this letter dated 10.09.2015, it is stated as follows:-

"This is with reference to Bulk LPG Transport Contract signed with you against our tender No.LPG/LOGS/IT/SR/2014/A for transportaiton of Bulk LPG by road to our LPG points.

Apart from the truck (s) already positioned by you against the LOI. ref. LPG/SZ/KRR dated 23.03.2015, we need additional 165 trucks of 18 MT capacity each, in line with capacity awarded in the LOI. This additional requirement is needed to fulfill temporary transportaiton of Bulk LPG by Road from our loading locations to various places in SZ/SCZ for a period of 8 months on adhoc basis from 22.07.2015.

If you are in a position to place additional trucks, then please inform us latest by 28.09.2015 with the following documents. As our recruitment is urgent, please note that tank trucks will be inducted on first come first serve basis till fulfillment of our total requirement of 165 trucks"

13. It is evident from the above letter dated 10.09.2015 of the corporation that even before issuing the present tender notification, the petitioner and other similarly placed contractors were called upon to express their willingness to supply additional trucks. This is in compliance with clause 24 of the terms and conditions of the tender flouted by the respondent corporation during September 2014 and which was awarded in favour of the petitioner association. Even though the petitioner agreed to supply 84 tanker truck load as against the demand of 165, the respondent corporation choose not to accept such a piece meal offer made by the petitioner corporation

in order to effectively and efficiently administer such additional requirement. In other words, the corporation intended to take such additional supply from a single entity and not from different entities in different ranges. In any event, there is no embargo or prohibition for the petitioner to participate in the tender and they can very well participate in the impugned tender notification flouted by the respondents. While so, I am of the considered view that there is no breach or contravention of the clauses contained in the terms and conditions of the tender flouted by the respondent corporation during September 2014 and consequently, this issue is answered against the petitioner.

14. The next question arise for consideration in this writ petition is whether the writ petition is maintainable or not. The learned senior counsel for the petitioner would contend that in the existing contract with the petitioner association, the petitioner association has to ply the truck loads from Ennore to other areas. In the present tender notification also, Ennore is included as one of the areas for supplying LPG refills. As Ennore is situate within the territorial jurisdiction of this Court, a part of cause of action for filing the writ petition arises within this Court. Countering such submission, learned counsel for the respondents would contend that Ennore is only a loading point as far as the present tender notification is concerned and the terminal points for supply of the LPG refills are situate outside the jurisdiction of this Court namely Cherlapally, Kondapally and Rajamundry, which forms part of South Central Zone. Therefore, according to the counsel for the respondents, the writ petition is not maintainable before this Court.

15. In the decision rendered by the Honourable Supreme Court in Bareilly Development Authority and another vs. Ajai Pal Singh and others reported in (1989) 2 Supreme Court Cases 116 relied on by the learned counsel for the respondents, it was held that when the dispute is covered under a contract, a writ petition is not maintainable especially when it is not a concluded contract. Furthermore, in this case, to attack the impugned tender notification, the petitioner places heavy reliance on the terms and conditions of the existing contract with them. While so, such disputes can be adjudicated only by an arbitrator. When there is a clause for arbitration indicated in the contract with the petitioner and when it is complained of being violated by the corporation, resort has to be made to initiate arbitration proceedings and this writ petition is not maintainable. Further, as per Clause 11 of the impugned tender notification in page No.178 of the typed set of papers, the pre-bid meeting for tank truck tender for HPCL, South Central Zone will be conducted at Visakha LPG terminal, Hindustan Petroleum Corporation Limited, HP Petro Park, Opp. INS Dega, Port Connectivity Road (Covent Junction to Sheela Nagar) Vishakapattinam 530 009 (Andhra Pradesh on 28.01.2016 at 15.00 hours onwards. Further, as per clause 10 of the impugned tender notification, it is specifically stated in clause 10 under the heading "law and place of jurisdiction" that "This pact is subject to Indian Law. The place of performance and jurisdiction

is the seat of the buyer." Therefore, it is clear that the writ petition is not maintainable before this Court and the jurisdiction to attack the impugned tender notification does not falls within the jurisdiction of this Court.

16. In the result, the writ petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

rsh

To

1. The Deputy General Manager-LPG
(South Zone)
Hindustan Petroleum Corporation Limited
1st Floor
Thalamuthu Natarajar Building
Egmore, Chennai - 600 008
2. Senior Category Manager-CPO (Marketing)
Hindustan Petroleum Corporation Limited
(A Government of India Enterprise)
Central Procurement Organisation - Marketing
Mumbai Refinery
Chembur, Mumbai - 400 074

1 cc to M/s.R. Karthikeyan, Advocate, Sr. 12701
1 cc to M/s. Abdul Saleem, Advocate, Sr. 12790

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