

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 25069 of 2015

Date of Decision: 19.01.2016

M/s Indian Oil Corporation Ltd. through its duly constituted Attorney Shri Akashdeep, Assistant Manager (Law)

..Petitioner

Versus

Chandigarh Administration through its Secretary Transport and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE ARUN PALLI.**

Present : Mr. B.R.Mahajan, Sr. Advocate with
Mr. Ashish Kapoor, Advocate, for the petitioner.
Mr. Harkesh Manuja, Advocate, for respondent Nos.1 to 3.
Mr. Arun Jain, Sr. Advocate with
Mr. Raman Sharma, Advocate, for respondent No.4.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner has challenged an order dated 09.11.2015 passed by respondent Nos.2 and 3 i.e. Director, Transport, Union Territory, Chandigarh and Divisional Manager, Chandigarh Transport Undertaking, Chandigarh accepting the quotation of Bharat Petroleum Corporation Ltd. (BPCL)-respondent No.4. The petitioner has also sought an order directing respondent Nos.1 to 3 to allot the contract for the supply of High Speed Diesel (HSD)/BS-IV in its favour.

2. Respondent Nos.1 to 3 addressed a letter only to the petitioner-Indian Oil Corporation Ltd. (IOCL), respondent No.4-Bharat Petroleum Corporation Ltd. (BPCL) and Hindustan Petroleum Corporation Ltd. (HPCL) requesting them to intimate respondent Nos.1 to 3 the rate of HSD/BS(IV) in the format attached in a sealed cover alongwith other

incentives and terms and conditions. This was, therefore, not an open tender as the quotations were requested only from the three government companies, namely, petitioner-IOCL, respondent No.4-BPCL and HPCL.

3. A pre-bid meeting was held on 04.09.2015 which was attended by all the parties concerned. By the meeting, the petitioner, respondent No.4 and HPCL were requested to quote the rates for the said products on the prescribed proforma already submitted to them and to quote their rates in a sealed envelope alongwith other terms and conditions duly signed as agreed upon in the meeting. As recorded by a letter dated 07.09.2015 addressed by respondent Nos.1 to 3 to the petitioner, respondent No.4 and HPCL, the terms and conditions were also admittedly furnished to the parties. This was.

4. Despite the same, respondent No.4 submitted its quotation as per its letter dated 10.09.2015. Admittedly, this quotation was not as per the said terms and conditions discussed and agreed to in the meeting held on 04.09.2015. Respondent Nos.1 to 3, however, contend that thereafter respondent No.4 in fact agreed that its financial bid would be on the terms and conditions stipulated in the letter dated 07.09.2015 which also referred to the said terms and conditions. On behalf of the respondents, reliance was placed on paragraphs-18 and 19 of the petition to contend that this is admitted by the petitioner itself. We will for the purpose of this judgment presume that to be so. In that event, the process adopted by respondent Nos.1 to 3 was unfair to the petitioner and probably even to the Hindustan Petroleum Corporation Ltd. We will assume that certain strict rules relating to tenders and the assessment of bids in open tenders do not apply to a process such as this where quotations are invited from specific corporations/bidders. However, even in such cases, the process must be fair.

In this case, one of the bidders i.e. respondent No.4 was permitted to change

its bid after all the bids were opened. Respondent No.4, therefore, had the benefit of seeing the petitioner's bid. It accordingly changed its bid by accepting the terms and conditions which it ought to have done in the first instance.

5. There is no doubt that the bid submitted on 10.09.2015 was not in conformity with the terms and conditions upon which the bids were invited, namely, those agreed upon in the meeting of 04.09.2015 and as recorded in the said letter dated 07.09.2015. Variations also had the financial implications. We will assume that in a process such as this it was not necessary for respondent Nos.1 to 3 to reject the 4th respondent's bid as being non-responsive. However, least of that must be sought in favour of the petitioner that it should also have been permitted to give a competing bid. The failure to do so would lead to injustice to the petitioner for respondent No.4 was given an opportunity of changing its bid which had financial implications, after seeing the petitioner's bid. The petitioner was not afforded the same opportunity. The award of work in favour of respondent No.4 is, therefore, liable to be set-aside.

6. Respondent No.4 contends that it has already spent an amount of ₹ 60 lacs in setting up the infrastructure pursuant to the work awarded in its favour. It is submitted that this Court ought not, therefore, to exercise its extra ordinary jurisdiction in the petitioner's favour.

7. There is a clear answer to this. Learned senior counsel appearing on behalf of the petitioner on taking instructions stated that the petitioner would be willing to take over all the works and to pay for the same. Secondly, the petitioner has agreed and undertaken to match the rates tendered by respondent No.4 in the fresh bidding process. In view of this, none of the respondents are adversely affected.

8. In the circumstances, the petition is disposed of by passing the following order:-

- i) The award of work in favour of respondent No.4 is quashed and set-aside.
- ii) Respondent Nos.1 to 3 are at liberty to invite fresh bids from the three corporations, namely, the petitioner-Indian Oil Corporation Ltd., respondent No.4-Bharat Petroleum Corporation Ltd. and Hindustan Petroleum Corporation Ltd.
- iii) The undertaking on behalf of the petitioner that it will at least match the financial bid of respondent No.4 on the agreed terms and conditions is accepted and it is so ordered.
- iv) The petitioner's undertaking to take over the works carried out by respondent No.4 and to pay for the same in the event of it being awarded the work is accepted.
- v) Till the fresh tender process is completed, the interim order dated 17.12.2015 shall continue.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

19.01.2016
'ravinder'

(ARUN PALLI)
JUDGE