

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 01st February 2016

+ W.P.(C) 380/2016 and CM Nos. 1566-67/2016

MANGLA OIL CARRIER PVT. LTD. & ORS. Petitioners

versus

INDIAN OIL CORPORATION LTD. Respondent

+ W.P.(C) 402/2016 and CM No. 1660/2016

RITU GOODS CARRIER AND ORS Petitioners

versus

INDIAN OIL CORPORATION LTD Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Akhil Sibal, Mr S. Udaya Kumar, Ms Bina Madhava,
Ms Akanksha Mehra, Mr Abhishek and Mr Aditya Garg,
Advocates

Mr S. Udaya Kumar, Ms Bina Madhava,
Ms Akanksha Mehra, Mr Abhishek, Advocates

For the Respondents : Mr Rajat Navet and Ms Sanya Talwar

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. The petitioners are aggrieved by the action of the respondent in stopping the loading advice of the Petitioners' Tank Trucks inspite of the said trucks being fitted with the Internal Excess Flow Check Valve (IEFC Valve for short) as on 22.09.2014.

2. The contention of the Petitioners is that their trucks were fitted with the IEFC Valve as on 22.09.2014, however the contention of the respondents is that the Petitioners, in the declaration submitted alongwith the bid, had in the column with regard to the fitting of the IEFC Valve had stated "No" and thus the respondent in compliance of the judgment of this court dated 24.09.2015 in WP(C) 964/2015 have stopped issuance of loading advice. The Petitioners contend that there was an error in the declaration submitted and erroneously in the relevant column they had mentioned "No" whereas the trucks were in fact fitted with the IEFC Valve and they had submitted the documents to substantiate the said fact. It is contended by the Petitioners that even the respondent has physically verified this fact.

3. The Respondent had issued a notice inviting e-tender for bulk LPG transportation contract by road. As per the notice inviting tender dated 01.09.2014, the bid submission/upload closing date was 22.09.2014. A dispute had arisen with regard to the date of the applicability of Clause 11(a) (x) of the NIT which provided that the

tank trucks offered should be fitted with IEFC Valve as per PESO guidelines.

4. By the interim order dated 05.02.2015 in **WP(C) 964/2015 Bajrang International & ors. Versus Indian Oil Corporation Ltd. (IOCL) & ors.** we had directed that those tanker trucks which did not have the said valves fitted as on 22.09.2014, shall not be taken up for further consideration and even in those cases, where letters of intent had been issued, the final work order shall not be issued till further orders from the Court. Thereafter it is contended that after physical verification of the fact that the tank trucks were fitted with IEFC Valve, the petitioners were issued provisional work orders.

5. Finally, by our Judgment dated 24.09.2015 in **WP(C) 964/2015 Bajrang International (Supra)** we directed the respondents to strictly adhere to the tender conditions including Clause 11(a) (x) and further to disqualify the tanks trucks offered by the bidders that were not fitted with IEFC Valves as on the bid submission/upload closing date (22.09.2014). The Respondents therein were further directed to revise the rankings by eliminating the tank trucks that were not fitted with IEFC Valves as on the bid submission/upload closing date and to issue the LOI/work order only after revision of the said ranking to the tank trucks offered that had the IEFC valve fitted as on the bid submission/upload closing date.

6. The respondent by its email/communication dated 10.12.2015 have stopped the issuance of loading advice to the petitioners on the ground that the Tank Trucks were not fitted with IEFC Valve. Reliance has been placed by the respondent on Annexure –II submitted by the petitioners alongwith the bid wherein the petitioners have mentioned "NO" in the column with regard to fitting of IEFC Valve.

7. The petitioners have contended that on account of mistake in Annexure – II "No" was mentioned whereas in fact the tank trucks were fitted with the IEFC Valve as on 22.09.2014. To show that the tank trucks were fitted with IEFC Valve as on the said date, reliance is placed on Certificate of Yearly Test of Safety Relief Valve, Internal Valve, Excess Flow Valve issued under Rule 18 of SMPV (U) Rules, 1981 and Safety Certificate issued under Rule 43, which, it is contended, is issued only after verifying that the IEFC Valve is fitted. Reliance is also placed on the minutes of meeting of the respondent dated 11.11.2014 wherein the respondent had mentioned that wrong entry in TT List (mistake in engine/Chassis No.Regno. ULW. Etc) – Annexure 2 will have to be verified with originals and alongwith physical verification. It is contended that the tank trucks were physically verified thereafter.

8. The fact that the Respondent issued provisional work orders to the Petitioners after our interim order dated 05.02.2015 in **WP(C) 964/2015 Bajrang International (Supra)** *prima-facie* lends credence to the submission of the petitioners that the respondent, prior to the issuance of the provisional work orders, had physically verified that the tank trucks were fitted with IEFC Valve as on 22.09.2014. Further, we by our Judgment dated 24.09.2015 in **WP(C) 964/2015 Bajrang International (Supra)** have directed the respondent to strictly adhere to the tender conditions including Clause 11(a) (x) and further to disqualify the tanks trucks offered by the bidders that were not fitted with IEFC Valves as on the bid submission/upload closing date (22.09.2014). The respondent is to issue work orders only to the tank trucks that were actually fitted with the IEFC Valve as on the said date. Even the NIT stipulates that the respondent shall not accept the details furnished by the bidders on their face value and the details have to be verified by way of physical inspection of the Tank Trucks offered. Even the respondent in its meeting dated 11.11.2014 have reiterated the fact that the tank trucks have to be physically inspected and the information supplied has to be verified.

9. The respondent by email/communication dated 20.12.2015 have directed the transporters/bidders of the subject tender to furnish details afresh as per uploaded data of Annexure – II and specifically with regard to date of fitting of IEFC Valve. Details have been sought

only for Tank Trucks which were fitted with IEFC Valve on or before 22.09.2014. The communication states that no details are required to be furnished for the Tank Trucks which are being withdrawn from offer or which are not fitted with IEFC Valve on or before tender closing date i.e. 22.09.2014 as per uploaded data of Annexure 2 of the tender.

10. The fact that the respondent is asking the bidders whose tank trucks were fitted with IEFC valve as on 22.09.2014 to furnish the details afresh implies that a fresh verification process is being undertaken by the respondent. The respondent are not accepting the information furnished by the bidders in Annexure – II submitted alongwith the bid on its face value. A physical verification in terms of the NIT is being undertaken afresh.

11. Since a fresh declaration is being sought and a physical verification is being undertaken, no prejudice would be caused, in case the petitioners who claim that their tank trucks were fitted with IEFC valve as on 22.09.2014 and there was a mistake in Annexure – II are also permitted to furnish a fresh declaration as sought for by the email/communication dated 20.12.2015.

12. In view of the above, we direct that the petitioners shall furnish the details as sought for by the respondent by its email/communication dated 20.12.2015 within one week from today. In addition to other

verifications, the respondent shall physically verify the factum of fitting of the IEFC Valve in the tank trucks of the petitioners as on 22.09.2014. On satisfaction of the conditions of the NIT, the respondent shall consider the Tank Trucks of the Petitioners. The writ petitions are disposed of in the above terms. There shall be no orders as to costs.

SANJEEV SACHDEVA, J.

February 01, 2016

HJ

BADAR DURREZ AHMED, J.

