* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on: 10th December, 2015
Judgment delivered on: 23rd March, 2016

+ WP(C) 11400/2015

M/s Suman Bulk Movers & Ors ..... Petitioners

versus

Indian Oil Corporation Limited (IOCL) ..... Respondent

<u>Advocates who appeared in this case:</u>

For the Petitioner : Ms Meenakshi Arora, Sr Advocate with Mr Neeraj Kumar
For the Respondent : Mr Rajat Navet, Ms Sanya Talwar and Mr Kushagra Pandit for IOC

+ WP(C) 10449/2015

M/s Jagdamba Roadlines & Anr ..... Petitioners

versus

Indian Oil Corporation Limited ..... Respondent

<u>Advocates who appeared in this case:</u>

For the Petitioners : Mr Anukul Raj, Mr Rahul Shukla and Ms Nikita Raj
For the Respondent : Mr Rajat Navet, Ms Sanya Talwar and Mr Kushagra Pandit for IOC

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

<u>SANJEEV SACHDEVA, J</u>

1. Both the petitions seek a mandamus against the respondents to fill up the requirement of additional 400 Tank Trucks in terms of

Clause 4 and Clause 24 of the General Terms and Conditions of the Tender No. LPG/LOGS/TT/NR/2014/A dated 01.09.2014 (hereinafter referred to as the 2014 Tender) and to quash the Tender. No. LPG/LOGS/TT/NR/2015 dated 23.10.2015 (hereinafter referred to as the 2015 Tender).

2. The contention of the petitioners is that the respondent alongwith other oil companies had floated the 2014 tender for fulfilling the requirement of Tank Trucks for a period ending on 31.10.2017. The tank trucks offered by the bidders were to be ranked in accordance with the procedure prescribed there under and LOI were to be issued according to seniority in ranking. The requirement indicated in the 2014 Tender was tentative and it envisaged that additional requirement would also be fulfilled from the existing tenderers.

3. It would be pertinent to mention that with respect to the 2014 tender there was spate of petitions filed by some tenderers. The 2014 Tender stipulated that only those Tank Trucks would be eligible for being considered which were fitted with the Internal Excess Flow Check Valve (IEFC Valve) fitted. The dispute was as to the date of fitting of the value. The Petitioners therein had contended that the IEFC value should be fitted prior to the date of the close of the bid on 22.09.2014, the respondents had contended that it was required to be fitted on a later date. We, by our judgment dated 24.09.2015 in

WP(C) 964/2015 Bajrang International & Others Versus Indian Oil Corporation & Others and other connected matters, held that the IEFC Valve should have been fitted as on the bid closing date i.e. 22.09.2014. Consequently, the Tank Trucks, offered by some Tenderers, which were not fitted with the IEFC Valve as on that date were disqualified. It is informed that Special Leave Petitions filed against the Judgment dated 24.09.2015 have also been dismissed by the Supreme Court.

4. It is contended that the impugned 2015 Tender has been floated to fill up additional requirement, which was not projected in the 2014 Tender. The 2015 Tender has been invited for the period coinciding with the period under the 2014 Tender i.e. till 31.10.2017. This, it is contended, has been done to overcome the effect of the judgment dated 24.09.2015 and to favour the tenderers who had been disqualified because of the said judgment.

5. The respondents have opposed the petition contending that the 2014 Tender had been invited for the requirement of 1513 Tank Trucks and the 2015 Tender has been invited for the subsequent additional requirement beyond 1513. It is contended that there was no requirement under the 2014 Tender to fill up the subsequent additional requirement by inviting the existing tenderers to supply the additional Tank Trucks. Reliance is place on our Judgment dated 23.11.2015 in ***WP(C) 8673/2015 Khushwant Singh & Others Versus Hindustan***

Petroleum Corporation Ltd. & another wherein it is held that neither of the clauses (Clause 4 & 24) oblige the respondents to fill up the requirement that has arisen after the filling of the original requirement from any particular category of bidders or transporters. It is contended that there is no vested or legal right of the Petitioners to have a right of first refusal.

6. To resolve the controversy we would need to examine some of the relevant clauses of the 2014 and the 2015 Tenders.

7. The Contract to be executed pursuant to the 2014 Tender is to be valid for a period of three years with effect from 01.11.2014 i.e. till 31.10.2017.

8. The Notice Inviting Tender of the 2014 Tender stipulates as under:

> "*NOTICE INVITING E – TENDER*
>
> *Electronic bids (e-tenders) are invited under Two-Bid system from bonafide Bidders, who are willing to quote rates and must have the following:*
>
> 1. *Own at least One Bulk LPG / PROPANE tank truck as on closing date of tender.*
> 2. *.......*
>
> *....... Bidders can quote attach trucks also, but induction of TTs shall be as per evaluation criteria of the tender.*
>
> *The bidders offering single ready owned truck can offer one proposed owned truck and bidders offering more*

than one ready owned trucks can offer maximum two proposed owned trucks.

9. Only those bidders who owned at least one Bulk LPG / PROPANE tank truck as on the closing date of the Tender could bid in the tender. The Bidders could offer owned trucks as well as attached trucks. In addition to ready owned trucks, the bidders could also offer proposed trucks. Bidder offering one ready tank truck could offer one proposed truck and bidders offering more than one ready tank truck could offer two proposed trucks.

10. Clause 20 of the NIT stipulates as under:

> *20. Negotiations:*
>
> *The Corporation reserves the right to:*
>
> *a. Negotiate with L1 Bidders (lowest quotee): if the rates quoted by L-1 bidder(s) are at the lowest of the rate band, there will not be any negotiations with such bidder(s).*
>
> *b. However, if the quoted rates of L1 bidder(s) (lowest quoted) are more than the lowest of the rate band and same is not acceptable to the Corporation, then Corporation reserves the right to negotiate with such L1 bidder(s) as per the ranking mentioned in the evaluation criteria in the general terms and condition of the tender to establish the lowest rate.*

c. Corporation may offer the rate in writing to such bidders for their acceptance/response.

d. <u>After establishing the lowest rate, if requirement of TT is not met from established L1 bidders, Corporation may negotiate /offer the established L1 rate to other bidders in order of their ranking for their acceptance or response.</u>

e. The above process shall continue till requirement of the truck is fully met against this tender. <u>If the above process still results in not meeting the full TT requirement as per NIT, then negotiations/counter offer exercise will be conducted with the balance bidders in their original order of ranking as mentioned in Evaluation criteria of tender till the full TT requirement as per NIT is met</u>. Corporation reserves its right for finalization of tender rates to meet the full TT requirement as per NIT.

f. If any bidder does not respond to the above exercise of negotiation within the date and time given in order of their ranking, such bidder may lose their chance and opportunity shall be extended to the next bidder as per the ranking.

g. No bidder shall be allowed to counter offer rates lower than the negotiated L1 rate in any category except in those category where the bidder has quoted lower rate than negotiated L1 rate in their original Price Bid.

h. Any offer received from the bidder without being asked by the Corporation shall be treated as unsolicited offer from bidder and same shall be rejected summarily. Similarly, any offer received *after due date and time stipulated by Corporation, shall not be considered.*

i. <u>In case, requirement of truck is not met after carrying out above process of negotiation with the bidders who participated in the tender and accepted the L1 rates, Corporation reserves its right to induct proposed trucks from the bidders in order of their ranking at the finalized L1 rate.</u>

j. <u>In case, requirement of truck is still not met after exercising the option (i) above, Corporation reserves its right to induct additional trucks (other than quoted trucks) from the bidders in order of their ranking at the finalized L1 rate. These additional trucks may be of own or attach.</u>

k. <u>Even after exercising the option (i) above, if requirement of trucks is still not met, then Corporation reserves its right to negotiate/counter offer rates other than L1 rate to the remaining bidders in order of their ranking till the requirement of trucks is met.</u>

l. Corporation reserves its right to use the lower finalized rate trucks for longer routes /destinations to ensure minimum financial outgo to the Corporation."

(Underlining supplied)

11. Clause 20 stipulates the manner of arriving at the lowest established rate and the induction of tank trucks as per their ranking. First, the requirement is to be fulfilled from the ready owned trucks at the L1 rate and in case the requirement is not fulfilled from the ready

owned trucks then the requirement is to be fulfilled from the proposed trucks in the order of their ranking at L1 rate. If the requirement is still not fulfilled then the corporation can induct trucks other than those quoted at L1 rates. If the requirement is still not fulfilled then the corporation can negotiate/counter offer rates other than L1 rate to the remaining bidders in order of their ranking till the requirement of trucks is met.

12. The requirement of Tank Trucks stipulated in the General Terms and Conditions of the 2014 Tender is as under:

> *"Companywise / Regionwise / Zonewise Estimated / projected peak season month Bulk upliftment by Road during the Contract Period in MTs is given as under:*

	Northern Region /Zone	***Eastern Region /Zone***	***North-East***	***Western Region /Zone***	***Southern Region /Zone***
IOCL	*116993*	*78608*	*40110*	*64926*	*143245*
BPCL	*53736*	*34775*	*0*	*84088*	*54600*
HPCL	*50360*	*44500*	*0*	*108150*	*68000*

> *The quantities mentioned above are purely indicative and directional and subject to changes based on various factors and circumstances.*
>
> *Companywise / Sourcewise Estimated / projected peak season monthly Bulk upliftment by Road for the Contract Period in MTs is given in Price-Bid, based on which financial outgo to the respective Corporation will be calculated for arriving at the ranking of bidders.*

Based on above peak season monthly Bulk upliftment by Road, Companywise / Regionwise / Zonewise Estimated / projected TT requirement for the Contract Period in numbers is given as under:

	Northern Region /Zone	***Eastern Region /Zone***	***North-East***		***Western Region /Zone***	***Southern Region /Zone***
			18MT	***7MT***		
10CL	*1513*	*1114*	*579*	*626*	*739*	*1616*
BPCL	*963*	*450*	*0*	*0*	*942*	*696*
HPCL	*767*	*704*	*0*	*0*	*1339*	*843*

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The above specific requirement is included in the respective total Regionwise / Zonewise tank truck requirement mentioned above. In order to meet these specific requirements of small and less than 8 year old tank trucks, Corporations will follow the evaluation criteria specified under clause no. 4 hereunder till these requirements are met.

In case sufficient numbers of such tank trucks are not received in this tender to meet the above requirement, Corporations reserve the right to take suitable measures as deemed fit to meet such requirement.

The TT requirement in numbers mentioned above are purely indicative and directional since it is based on various assumptions/parameters like LPG availability at sources, demand fluctuations, average TT capacities, commissioning of other transportation modes etc. Corporations therefore

reserves their right at their sole discretion to alter the above mentioned TT requirement."
(Underlining supplied)

13. The 2014 Tender clearly stipulates that the requirement stipulated is estimated/projected and the quantities mentioned are purely indicative and directional and subject to changes based on various factors and circumstances.

14. The manner of evaluation of the bids and ranking of the bidders stipulated in the 2014 Tender is as under:

"4. EVALUATION OF TENDERS:

i. This e-tender is floated in two-bid system i.e. credential bid & price bid. Credential bid will be first opened on scheduled date and will be evaluated as per the terms and conditions of the tender. Price bids of the bidders, who have qualified in credential bid based on above evaluation by the Corporation, will be opened on subsequent notified date.

*ii. **Ranking of bidders**:*

a) Original Ranking of the bidder(s) i.e. L-1, L-2, L-3 etc will be decided on the basis of ascending order of financial outgo to the Corporation on overall basis, considering the tentative volume, original rates quoted for all the sources and sectors as mentioned in the Price bids, as per (Annexure-C). In case any bidder has not quoted rate for one/some sectors of a particular Region

/Zone of the concerned Corporation, then the upper rate of the price band for that particular sector of that particular Region/Zone of that particular Corporation shall be taken while calculating the financial outgo to the Corporation for arriving at the ranking of that bidder (In case of North-East of IOC i.e. tenders not having price band, in case any bidder has not quoted rate for one/some sectors, then the highest quoted rates of any bidder for that particular sector shall be taken while calculating the financial outgo to the Corporation for arriving at the ranking of that bidder.)

b) *In case, similar rates are quoted by more than one bidder and there is same financial outgo at any particular rank, these bidders shall be considered <u>for further ranking on the basis of ascending order of weighted average age of the qualified quoted trucks (owned as well as attached trucks)</u> by them in terms of number of days. The age in no. of days shall be calculated as under:*

***** ***** *****

c) *In case rates quoted as per 4.ii.a. and weighted average age of all the quoted trucks as per 4.ii.b and no. of owned trucks as per 4.iic. are same then further ranking will be based on number of total qualified quoted trucks (owned and attached) by each bidders in descending order.*

d) *In case rates quoted as per 4.ii.a., weighted average age of all the quoted trucks as per 4.ii.b and no. of owned trucks as per 4.ii.c, are same then further ranking will be based on number of total qualified quoted trucks (owned and attached) by each bides in descending order.*

iii. ***Allocation of tank trucks (Applicable for tenders having Price Band in Price-Bid only**): In case of bidders quoting rates, which is floor price i.e. at the bottom of the price band for all sectors and there is same financial outgo, then allocation of Tank Trucks (TTs) to such bidders will be as under:*

a. *In case quoted tank trucks are less than the requirement, then all the tank trucks quoted will be allocated subject to fulfilment of eligibility criteria as per tender conditions.*

b. *In case quoted tank trucks are more than the requirement, then TTs in order of latest model (from date of first registration as mentioned in table ii.b. above in respect of individual Tank Tuck) will be allocated to the bidders till the TT requirement is fulfilled.*

c. *In case at any point of time during allocation of TTs as per iii.b above, if it is found that no. of TTs required are less than the balance available TTs and all the balance TTs are of same model, then allocation will be made on proportionate basis to bidders based on the no. of balance* *trucks available with the bidders after allocation of trucks as per iii.b above.*

e.g. let us assume, balance quoted trucks is X, requirement is Y, left out trucks of a bidder is Z, then that particular bidder will get no. of trucks from the balance trucks = Z(Y/X) (trucks will be allocated upto next whole number in case of decimal, i.e. greater or equal to 0.5 is 1 and less than 0.5 is zero).*

Corporation also reserves the right to close the tender without inducting balance tank trucks from this group (having same model) or accept all the trucks in this group.

d. *In the above cases, the floor price quoted by the bidders shall be termed as lowest quoted (L1) rates.*

e. *In case, requirement of tank trucks is not met by the original quoted bidders at floor price (as mentioned in iii. A, b & c), then remaining bidders in order of their original ranking (as per 4.ii(a), (b), (c) & (d) shall be called one by one to match the floor price i.e. lowest quote for the tender till requirement of TT is met. All TTs offered by such bidders shall be taken subject to fulfilment of qualifying criteria and Corporation's requirement.*

f. ***Proposed trucks**: In case the requirement of trucks is still not met, then the quoted proposed trucks shall be allocated as per the ranking as mentioned at 4.ii.a, 4.ii.b, 4.ii.c* *and 4.ii.d amongst the parties who has either originally quoted or matched the floor price. In case of requirement at any stage is less than the availability of tank trucks in respect of any bidder is found, then latest model will be considered e.g. In case Corporation requires one tank truck against the offer of two proposed trucks.*

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 @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.*

h. *In case, even after exercising the allocation of trucks as per (g) above, requirement of tank trucks is still not met, Corporation reserves the right to negotiate and finalize other acceptable rates other than floor price rates amongst the remaining bidders in order of their ranking and all TTs offered by such bidder shall be taken at the negotiated rates till the requirement of TT is met.*

i. *Corporation reserves its right to negotiate and induct TTs from the remaining bidders as per (h) above till the requirement of TT is met.*

j. In case, bottom of the rate band i.e. Floor price is not quoted by the bidders, then allocation of trucks will not be applicable as per above. Further allocation of trucks will not be applicable as per above. ***Further allocation of trucks will be as below:***

iv. In case, rates (other than floor price) quoted by L-1 Bidder(s) are acceptable to the Corporation and if Corporation decides not to negotiate the quoted rates, then trucks offered (owned and attached) by the L-1 Bidder(s) will be allocated as per ranking as mentioned e.g. 4.ii(a), (b), (c) & (d) till the requirement of TTs is fulfilled.

v. In case, rates ***(other than floor price)*** *quoted by L1 bidder(s) is not acceptable to the Corporation, negotiation/counter offer exercise will be carried out with such bidder(s) in order of ranking as mentioned at 4.ii(a), 4.ii(b). 4.ii(c) & 4.ii(d). Trucks offered by these bidder(s) will be allocated upto the requirement at the revised/negotiated L1 rates accepted by them during negotiation/counter offer.*

vi. In case trucks offered by L1 bidder(s) are not meeting the full requirement, then L1 rates/revised/negotiated L1 rates (as the case may be) shall be offered to other bidders. Such bidders shall be offered the finalized L1 rates and

vii. they will have to confirm their acceptance in writing within the given date & time. In case of non-receipt of confirmation within the stipulated period it will be construed that they are not *interested in accepting the offered rates in this tender. Further induction of trucks from the transporters who have accepted the finalized L1 rates will be done in order of their ranking as mentioned at 4.ii.a, 4.ii.b, 4.ii.c and 4.ii.d till the requirement is met.*

viii. ***Proposed trucks:*** *In case the requirement of trucks is still not met, then the quoted proposed trucks shall be allocated as per the ranking as mentioned at 4.ii.a, 4.ii.b, 4.ii.c and 4.ii.d. In case of requirement at any stage is less than the availability of tank trucks in respect of any bidder is found, then latest model will be considered e.g. In case Corporation requires the tank truck against the offer of two proposed trucks then Corporation will take the latest model.*

ix. ***Additional trucks:*** *If, after exercising the option upto (vii) as mentioned above, full requirement of trucks is still not met, the Corporation reserves the right to accept more trucks at negotiated L1 rates from the bidders in their original order of ranking. 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.*

In this case, bidders who are now offering additional trucks should first deposit additional EMD at the rates applicable per proposed truck as specified in this tender i.e. @ Rs.50,000/- truck & all required documents for the additional trucks within a specified period not exceeding 15 days from the date of such offer and only then their offer for additional trucks will be considered. All such *offered additional tank trucks should be presented for physical verification within 60 days from the date of such offer, failing which the EMD deposited for such additional trucks will be forfeited.*

x. If the above still results in deficiency of trucks, then negotiations/counter-offer exercise will be conducted with the balance bidders in their order of ranking till the full requirement of trucks is met. Bidders to note that a bidder placed in the lower order of ranking may not get an opportunity of induction of their trucks if requirement of trucks is met from the bidders ranked above them.

xi. In case the requirement of trucks is still not met, then the quoted proposed trucks shall be allocated as per the ranking as mentioned at 4.ii.a, 4.ii.b, 4.ii.c and 4.ii.d and as per clause (vii) & additional trucks as per clause (viii).

xii. For North-East (for IOCL only), separate ranking & financial outgo will be maintained for 7 MT capacity trucks keeping all other clauses as mentioned above intact.

xiii. No bidder will be allowed to counter offer rates lower than the negotiated L1 rates in any category. In case in any category, bidder has originally quoted the rates which is lower than the negotiated L1 rates, such rates will be accepted. However, status/ranking of bidder will not change due to the bidder's original lowest quote in any particular sector than the negotiated rates despite the fact that the financial outgo may become less than the original L1.

Any offer/counter offer received from bidders without being asked by the Corporation shall be treated as unsolicited offer and shall be summarily rejected.

xiv. IOCL/BPCL/HPCL reserves its right for not inducting any proposed trucks. In such an event, EMD collected from bidder for proposed trucks shall be refunded.

15. The trucks are to be ranked on the basis of the financial outgo to the corporation and the bidders are to be considered on the basis of the ascending order of weighted average age of the qualified quoted trucks and the allocation of the requirement made accordingly. If the quoted tank trucks were less than the requirement, then all the tank trucks quoted would be allocated subject to fulfillment of eligibility criteria as per tender conditions. In case the quoted tank trucks are more than the requirement, then the tank trucks are to be ranked and allocation made according to the ranking at the floor price. In case the requirement of trucks is still not met, then the quoted proposed trucks are to be allocated as per the ranking amongst the parties who has either originally quoted or matched the floor price. If the full requirement of trucks is still not met, then the Corporation reserved its right to accept more trucks at the floor price from the bidders in their original order of ranking. In case the requirement of tank trucks is still not met, Corporation reserved its right to negotiate and finalize other acceptable rates other than floor price rates amongst the remaining

bidders in order of their ranking and all TTs offered by such bidders were to be allocated at the negotiated rates till the requirement of TT is met. In case the requirement of trucks is still not met, then the quoted proposed trucks shall be allocated as per their ranking. If even thereafter the full requirement of trucks is still not met, the Corporation reserved its right to accept more trucks at negotiated L1 rates from the bidders in their original order of ranking. If the above still results in deficiency of trucks, then negotiations/counter-offer exercise is to be conducted with the balance bidders in their order of ranking till the full requirement of trucks is met. In case the requirement of trucks is still not met, then the quoted proposed trucks shall be allocated as per their ranking.

16. Clause 24 of the the General Terms and Conditions of the 2014 Tender reads as under:

> *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 Pvt. Parties /Companies and subject to other terms and conditions which the Corporation may stipulate for the purpose."

17. Clause 24 stipulates that during the pendency of the contract, if as per the Corporation's assessment, additional tank trucks more than the contracted tank trucks is envisaged then the Corporation reserved its right at any point of time to hire any tank truck, over and above the tank trucks accepted and in such circumstances, it would be free to hire tank trucks as may be required by the Corporation from the existing transporters at a rate not higher than their existing rates.

18. Now adverting to the 2015 Tender, we notice that the Contract to be executed pursuant to the 2015 Tender is to be valid till 31.10.2017 from the placement of work order on the successful bidders.

19. Relevant clause of the 2015 Tender reads as under:

"The interested bidders will carry out the transportation of bulk LPG by road in tank trucks, from loading locations as mentioned in Annexure-IV to all Bottling Plans/Customers (Ex-MI/Delivered) of IOCL and also for stock transfer of Auto LPG from supply sources to Bottling Plants. This contract will be valid till 31.10.2017

from the placement of work order on successful bidders."

20. The General Terms and Conditions of the 2015 Tender read as under:-

> "*Additional Tank Trucks required under this tender for:*
>
> *NR: 400*
>
> *The TT requirement in numbers mentioned above are purely indicative and directional since it is based on various assumptions/parameters like LPG availability at sources, demand fluctuations, average TT capacities, commissioning of other transportation modes etc. Corporations therefore reserves their right at their sole discretion to alter the above mentioned TT requirement."*

21. A comparison of the General Terms and Conditions of the 2014 Tender with the 2015 Tender reveals that the same are similar in all respects.

22. The 2015 Tender is for 400 Tank Trucks and is for the remaining period of the 2014 Tender i.e. till 31.10.2017.

23. A reading of the 2014 tender clearly establishes that the requirement indicated in the NIT was tentative and dependent upon various factors, the same could increase or decrease. For fulfilling the requirement, the lowest price had to be established and thereafter the eligible quoted tank trucks were to be allocated in the order of their ranking. After exhausting the eligible quoted tank trucks, the remaining requirement, if any, was to be fulfilled from the proposed

tank trucks in the order of their ranking at the lowest established rate. Thereafter at a higher negotiated rate in the order of ranking. The 2014 Tender provides the entire mechanism for fulfilling the requirement.

24. It is not in dispute that the number of eligible tank trucks offered by the bidders for the 2014 tender are in excess of the estimated/projected requirement therein. Several bidders who had quoted eligible tank trucks have not been issued any letter of Intent.

25. In the first round of litigation pertaining to the 2014 Tender, which is covered by the Judgment dated 24.09.2015 in ***Bajrang International (Supra)***, the issue was with regard to the date of the installation of the IEFC Valve in the Tank Trucks. We had held that the IEFC Valve should have been fitted as on the bid closing date. The original ranking prepared contrary to the terms of the 2014 Tender was quashed and the corporations were directed to prepare the ranking afresh. In terms of the said judgment, several Tank Trucks were disqualified.

26. The Respondent without completing the process of allocation under the 2014 Tender has floated the 2015 Tender. The 2015 Tender has been floated on 23.10.2015 i.e., within 30 days of the Judgment dated 24.09.2015. It would be relevant to note that the Special Leave Petition filed by the Respondent Corporation impugning the judgment

dated 24.09.2015 was dismissed on 23.11.2015. Without even waiting for the decision of the Special Leave Petition, the respondent corporation floated the 2015 Tender and that too for the balance period of the 2014 Tender.

27. It is apparent that the requirement as stipulated in the 2015 Tender is in fact the requirement of the 2014 Tender, which was then estimated/projected. It is apparent that what the 2015 Tender seeks to do is to provide an avenue to the bidders who were disqualified in terms of the judgment dated 24.09.2015 to bid afresh for the requirement under the 2014 Tender. There is merit in the submission of the petitioners, that the respondents are trying to nullify the effect of the judgment dated 24.09.2015.

28. This plea is further fortified from a reading of the corrigendum dated 05.12.2015 issued by the Respondent corporation.

> *"All the prospective bidders are advised to read the Clause No. 11(b) of terms & conditions of our Tender (No. LPG/LOGS/TT/NR/2015) alongwith the following conditions also:*
>
> *1. Tank Trucks which are not under contract with any Oil company (including Pvt. Company) on the date of LOI of this tender may be offered in this tender.*
>
> *2. Tank Trucks which are affected for not having fitted with IEFCV on or before 22.09.2014 may also be offered against this tender irrespective of their enrolment under any contract or not with any*

Oil Company (including Pvt. Company) on the date of LOI of this tender.

3. *Tank Trucks which have been awarded adhoc contract against IOC Tender No. LPG/LOGS/TT/NR/2014/A may also be offered in this tender."*

29. Clause 11(b) of the General Terms and Conditions of the 2015 Tender reads as under:

> *b) No tank truck will be offered under this tender which is presently in Contract with any Oil Company (including Private Company) for a Period beyond the commencement date of this contract i.e. date of placement of LOI.*

30. What the corrigendum dated 05.12.2015 seeks to do is to permit the tank trucks, which were disqualified in view of the judgment dated 24.09.2015 for not having been fitted with the IEFC Valve as on 22.09.2014, to be offered irrespective of their enrolment under any contract with any Oil Company (including Pvt. Company) on the date of LOI of that tender. Whereas other tank trucks which were not disqualified earlier were not permitted if they were under any contract with any Oil company as on the date of the LOI. This clearly establishes that the respondent corporation wants to nullify the effect of the Judgment dated 24.09.2015 and by every means possible enter into a contract with the bidders who were disqualified thereby.

31. The reliance placed by the respondent corporation on the decision of this court dated 23.11.2015 in the case of ***Kushwant Singh (HUF) (Supra)*** is misplaced. The said judgment is not applicable to the facts of the present case. In the said case, the respondent corporation Hindustan Petroleum Corporation Limited had issued a letter dated 01.09.2015 to the existing successful LPG Transporter seeking additional Tank Trucks on ad hoc basis for a period of six months till 31.03.2016 only. In the 2015 Tender, the corporation is seeking to fill up the requirement on a regular basis and for the remaining period of the 2014 Tender. Further a clear attempt is being made to nullify the effect of the Judgment dated 24.09.2015 in ***Bajrang International (Supra)*** and to favour the bidders disqualified in terms thereof.

32. In view of the above, the Writ Petitions are allowed. Tender. No. LPG/LOGS/TT/NR/2015 dated 23.10.2015 is quashed. The respondent is directed to fill up its requirement of additional tank trucks in accordance with the General Terms and Conditions of the Tender No. LPG/LOGS/TT/NR/2014/A dated 01.09.2014. There shall be no orders as to costs.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

MARCH 23 , 2016

HJ