Reserved on : 07.09.2017
Delivered on : 03.10.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.32266 to 32268 of 2016 and
W.M.P.Nos.27983 to 27985 of 2016

P.Seetharaman,
Proprietor of Jai Maruthi Transport,
S/o T.Pooghavanam,
No.15-C Block, Lalithapuram,
Thiyagharaya Nagar,
Chennai - 600 017. ... Petitioner in W.P.No.32266/2016

R.Soundar,
Proprietor of Jeeva Road Lines,
S/o Ramdoss,
Old No.103, New No.68,
Shanmugarayan Street,
Seven Wells,
Chennai - 600 001. ... Petitioner in W.P.No.32267/2016

R.Vijayalakshmi,
Proprietor of Arulmurugan Transport,
No.9, CPC Street,
Thiruvallur Nagar,
Arumbakkam,
Chennai - 600 106. ... Petitioner in W.P.No.32268/2016

Vs.

1. The Secretary,
   Ministry of Petrol and Natural Gas,
   Sastri Bhavan, New Delhi - 110 001.

2. The Chairman,
   Indian Oil Corporation Limited,
   Mumbai - 400 001.

3. The Executive Director,
   Indian Oil Corporation Limited,
   139, Mahatma Gandhi Road,
   9th Level (Nungambakkam High Road),
   Chennai - 600 034.

4. The Deputy General Manager (In-charge),
   TNSO, 4th Level,
   Nungambakkam High Road, Chennai - 600 034.

5. The Deputy General Manager (RCC/SR),
   TNSO, 8th Level,
   Nungambakkam High Road, Chennai - 600 034.

6. The Deputy General Manager,
   Marketing Division, Korukupet,
   Chennai - 600 021. ... Respondents in all W.Ps

Petitions filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned order dated 31.08.2016 passed in RCC/SR/TNSO/ PT/43/2015-16 issued by the 5th respondent and quash the same and consequently direct the respondents to award the contract to the petitioner herein since the petitioner was originally declared as L1 under the tender as per the finance bid released in their website.

For Petitioner : Mr.S.S.Rajesh
(in all W.Ps.)

For Respondents : Mr.J.Madanagopal Rao,
(in all W.Ps.) Senior Central Govt. Standing Counsel (R1)

Mr.Mohammed Fayaz Ali (R2 to R6)

COMMON ORDER

The above Writ Petitions are filed by the petitioners to issue writs of certiorarified mandamus to call for the records pertaining to the impugned order dated 31.08.2016 issued by the 5th respondent and to quash the same and consequently, direct the respondents to award the contract to the petitioners, since the petitioners were originally declared as L1 under the tender as per the finance bid released in their website.

2.The petitioner in W.P.No.32266 of 2016 is the Proprietor of M/s.Jai Maruthi Transport. The petitioner in W.P.No.32267 of 2016 is the Proprietor of M/s.Jeeva Roadlines and the petitioner in W.P.No.32268 of 2016 is the Proprietor of M/s.Arulmurugan Transport.

3.Since the relief sought for in all these Writ Petitions are one and the same, all the three Writ Petitions are disposed of by this common order.

4.The brief case of the petitioners is as follows:

(i)The petitioners applied for tender for road transportation of Bulk Petroleum products, separately, under General Category and quoted a price of L1. Further, the petitioners have been transporting the Indian Oil Corporation petroleum products for more than 20 years without any complaint. After the process of submission of the tenders and the evaluation of the bids, the petitioners were notified as L1 tenderers in the official website of the 5th respondent and in view of the same, they were entitled for the award of the contract. However, even after a lapse of six months since the tender process was completed, they were not awarded the contract. Hence, they sent mails to the respondents on the delay in the process. However, they received a text message that their tender bids have been rejected, though they were qualified and declared/notified as L1 by the 5th respondent. However, the respondents have not given any details as to under what circumstances the tenders submitted by the petitioners have been rejected. According to the petitioners, the transportation of the petroleum products is their only source of income and they have been doing it for the past 20 years.

(ii)While floating the tender, the 2nd respondent has fixed certain Eligibility Criteria. According to the petitioners, they have satisfied all the Eligibility Criteria and there is no compromise in any of the safety and other criteria so as to ensure that there is no tampering of the vehicle or the container. According to the petitioners, they have satisfied the Eligibility Criteria and qualified themselves in passing through the Technical Bid. Once the Technical Bid is accepted, the next step adhered is evaluation of the Financial Bid and while finalizing the same, they were declared as L1 by the 3rd respondent in their official website. Since the petitioners were declared as L1, there were waiting for the Work Order to be issued in their favour. Since no Work Order was forthcoming and there was delay, they sent mails to the respondents 3 & 4 for ascertaining the status of the tender. The petitioners received reply through SMS stating that the Bids were rejected during the financial evaluation by the duly constituted Committee on NIT requirement.

(iii)The petitioners sent letters dated 20.08.2016 and 25.08.2016 to the respondents asking the respondents as to how the bids could be rejected after being qualified under Eligibility Criteria, Technical Bid and Financial Bid. By their letter dated 31.08.2016, the respondent has stated that if the tenderers quoted the same L1 price, priority will be given to the dealers for their own load only. Further, according to the petitioners, they were not provided with an opportunity to negotiate on the rates quoted by the other bidders to match the Financial Bid of L1. The reply issued by the 5th respondent is in violation of the principles of natural justice. The tender conditions have been flouted and the same has been confirmed to the people, who are near and dear to the respondents. The rejection of the tenders on the ground of so called priority as claimed by the respondents is not sustainable under law and the rejection of their tenders and allotment to the 3rd party, who did not qualify as L1 at the initial stage, is void ab initio and the same needs to be quashed. In these circumstances, the petitioners have filed the present Writ Petitions.

5.The brief case of the respondents 2 to 6 is as follows:

(i)According to the respondents, the evaluation of the tenderers are done as provided under Clause III of the Tender Documents under two bids system viz., Technical Bid and Price Bid. Only the tenderers, who qualify under the Technical Bid based on technical evaluation shall be eligible for Price Bid. The Price Bid includes offers for transportation rates in four different items in categories of 12KL and 18 KL and above upto 24KL as follows:

- Rate in Rs. per KL (for 12KL Tts)
- Rate in Rs. per KL per KM(for 12KL Tts)
- Rate in Rs. per KL (for 18KL and above upto 24KL)
- Rate in Rs. per KL per KM(for 18KL and above upto 24KL)

(ii)The tenderers, while submitting their quote, are required to quote within (+/-) 10% of the estimated rates. The tenderers were evaluated as per the Evaluation Criteria given in the Tender Document. The tenders were decided as per the relevant Evaluation Criterion as provided under Clause III (4) to (6), (8), (9) and (15) of the Tender Document.

(iii)Pursuant to the E-Tender, bids were received from the petitioners, offering 5, 6 and 7 Tank Trucks (TTs) under General Transporter Category. The average age of the fleet offered by the petitioner in W.P.No.32266 of 2016 was 3594 days, that of the petitioner in W.P.No.32267 of 2016 was 2961days and that of the petitioner in W.P.No.32268 of 2016 was 3240 days. The L1 rate received was 10% (less) and the number of TTs offered by the original L1 bidders were 308 and 254 Tank Trucks of 12KL and 18KL and above respectively. The petitioners originally quoted -10% and were ranked No.61, 46 and 54 respectively in the seniority list as per the given Evaluation Criteria Clause III (5). The number of Trucks available at the disposal of the Corporation at L1 rate is much higher than the requirement given in the tender. The total requirement of TTs had been met within ranking No.35 with average age of fleet of 2231 days, hence, with reference to Evaluation Criteria Clause III (6), the petitioners shall not get any allocation of TTs in view of their lower position in the seniority list.

(iv)The declaration of the petitioners to be L1 bidders does not automatically qualify them to be entitled for awarding of the contract and the petitioners are still required to clear the seniority list in the said Price Bid. No negotiation was held with L1 bidders. As per the pre-disclosed tender condition Clause III(8) of the Evaluation Criteria, the retail outlet dealers were offered L1 rate for acceptance for their own supplies and allocated on acceptance of L1 rate at first instance. The entire process of selection is transparent and borne out of records and there is no scope for violation of any tender conditions as alleged by the petitioners. The list of the selected candidates has been handed over to the petitioners through their counsel. In these circumstances, the respondents 2 to 6 prayed for dismissal of the Writ Petitions.

6.Heard Mr.S.S.Rajesh, learned counsel appearing for the petitioners, Mr.J.Madanagopal Rao, learned Senior Central Government Standing Counsel for the 1st respondent and Mr.Mohammed Fayaz Ali, learned counsel appearing for the respondents 2 to 6.

7.The learned counsel appearing for the petitioners submitted that the impugned order dated 31.08.2016 is biased, prejudiced and against the principles of natural justice. Further, the impugned order is against the provisions of the tender conditions and has been issued to support the 3rd party transporters, who are close to the respondents. Further, the learned counsel submitted that the impugned order has been passed without providing an opportunity to the L1 tenderers before negotiating on the rates quoted by the other bidders to match the Financial Bid of L1.

8.Countering the submissions made by the learned counsel for the petitioners, the learned counsel for the respondents 2 to 6 submitted that since the petitioners have not cleared the seniority list as required in the tender conditions, the tenders were not awarded to them. The petitioners were not awarded the tender in view of their lower position in the seniority list. The total requirement of TTs were met within the rank No.35 with average age of fleet at 2231 days, whereas the petitioners were ranked 61, 46 and 54 in the seniority list prepared as per given Evaluation Criteria Clause III (5), therefore, the tender was not awarded to them. Further, the learned counsel submitted that there is no violation of tender conditions and the process of selection is transparent and borne out of records and there is no scope for violation of any tender conditions as alleged by the petitioners.

9.On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the petitioners, who are the Proprietors of Transport Companies, had participated in the tender for road transportation of Bulk Petroleum products under General Category. They have been transporting the Indian Oil Corporation Petroleum products for more than 20 years. In the tender process, the petitioners were notified as L1 tenderers in the official website of the 5th respondent. Since the tender was not awarded to them even after a lapse of six months, the petitioners sent mails to the respondents enquiring about the delay in the process. However, the 5th respondent informed the petitioners that their bids were rejected. The petitioners contended that even without giving an opportunity of personal hearing, the rejection of their bids is violative of principles of natural justice. Further, the petitioners contended that they have fulfilled all the Eligibility Criteria and therefore, the respondents should not have rejected their bids.

10.The 2nd respondent, while floating the tender, had fixed certain Eligibility Criteria, which is extracted below:

"Eligibility Criteria:

1.The Bidders can quote in two categories viz., Transporter and Dealer/Direct Customers. The Dealer and Direct Customers category is only for Transportation of product for their own requirement.

2.There is no minimum TT requirement for Dealer/Direct Customer category. However, tenderer quoting as transporter shall have to offer minimum 5 (five) tank trucks and out of which the tenderer shall own minimum of 3 (three) tank trucks. The tenderer may offer additional tank truck. For additional TTs offered, the minimum number of owned TTs shall be 50%. The total no. of TTs offered and minimum requirement of ownership shall be as per the illustration below

Total TTs	Owned Minimum	Attached
5	3	2
6	4	2
7	4	3
8	5	3
9	5	4

and so on. The offer of additional attached tank trucks not meeting the above criteria shall not be considered.

3.RO Dealer/Direct Customer may offer tank trucks (any number of TTs, i.e. one or more) as per requirement for their own supplies only and all such tank truck should be owned by the RO Dealer/Direct Customer.

4.RO Dealer desirous to offer tank trucks more than their own requirement shall fulfill the norms of minimum offer of tank trucks as required for transporters mentioned in 2(a) above. All such dealers shall be treated as transporters for further evaluation.

5.The owned tank trucks offered by the tenderer should be in their name i.e. Firm or Partner or Company or Proprietor. In case of partnership firm participating in this tender, the formation of such partnership firm shall not be later than dated 16/12/2015. The tender submitted by the partnership firm formed later than this date shall be rejected. The partnership firm should be registered. Un-registered partnership firms will not be considered.

6.Age (as mentioned in RC book) of Tank Truck offered shall be as prescribed by Local Laws and in any case shall not exceed 15 years on the date of tender opening i.e. 15/01/2016.

7.All transporters/dealers should have a Certificate of Registration in line with Carriage by Road Rules, 2011, released by Ministry of Road Transport and Highways vide Gazette Notification of

India dt 28/02/2011.

8.All offered TTs should have valid RTO registration and CCOE License.

9.Tenderers shall give their consent to sign integrity pact as per the attached format.

10.Tenderers shall give their consent to install Anti-Lock Braking System for all the TTs finally selected through this tender. The Anti-Lock Braking System (ABS) shall confirm to IS:11852:2003.

11.Tenderers shall give their consent to install SS locking system (Stainless Steel locking system) for all the TTs selected through this tender.

12.The bidders shall fill the details of ownership of TTs, age of Tta, RTO Registration and CCOE License as per Sr.No.2, 3 & 5. There will be no verification of these documents at the time of tender evaluation. The parties will be selected on the basis of information submitted by them in the tender document. RTO registration and CCOE license will be verified by State Office before issuance of LOI. All above credentials shall further by the respective locations for which LOI have been issued before being recommended for issuance of work order by State Office. Please note that in case, it is found that the information submitted in the tender document is not correct, suitable action as deemed fit including forfeiture of EMD shall be taken. Hence, bidders are advised to submit correct information in the tender document."

11.By letter dated 31.08.2016, the 5th respondent informed the petitioners that their bids were rejected since the petitioners were at the lower level of seniority list and allocation were made as the requirement of number of TTs was fulfilled. It is also relevant to extract the Evaluation Criteria of the Tenderers as per the agreement, which reads as follows:

"EVALUATION OF THE TENDERERS:

1.This Public Tender is floated in two bid system i.e. technical bid & price bid. First technical bid shall be opened on scheduled date and shall be evaluated. Price bids of only the technically qualified tenderers, based on technical evaluation, shall be opened on a notified date.

2.Price bid includes offer for transportation rates in four different items in categories of 12KL ands 18KL and above upto 24 KL as detailed below:

- Rate in Rs. per KL (for 12KL TTs)
- Rate in Rs. per KL per KM(for 12KL TTs)
- Rate in Rs. per KL (for 18KL and above upto 24KL)
- Rate in Rs. per KL per KM(for 18KL and above upto 24KL)

Tenderers shall quote single percentage and the same will be applicable for the above items.

3.IOC shall offer "Estimated POL transportation rate" for the above four items and tenderers to quote only one percentage within (+/-) 10% of the offered estimated transportation rate. The tenderers quoting beyond 10% of any of the estimated transportation rates shall be treated as disqualified and their tender shall be rejected.

4.Ranking of the tenderers i.e. L-1, L-2, L-3, etc., shall be decided on minimum percentages quoted for all the four items.

5.In case more than one party has quoted same rate, seniority shall b decided in following sequence:

(i)Tank trucks offered by RO Dealer/Direct Customer.

(ii)Average age of the fleet.

(iii)Maximum number of owned TTs offered.

(iv)The maximum number of TTs shall be 10% of total requirement of TTs in this tender or 5 whichever is more would be considered as par for evaluation of this criteria.

(v)Tenderer offering highest number of 18 KL and above upto 24 KL above Tts.

6.The TTs shall be selected in order of their seniority as decided after considering above guidelines. Hence, it is possible that the tenderers who are ranked lower in the seniority list for that particular L-1, L-2, L-3, as the case may be, may not get any allocation.

7.In case rates offered by L-1 tenderers are not acceptable to IOC then IOC has the discretion to negotiate with L-1 tenderers. The L-1 rates with or without negotiations shall be established and shall be offered to all the RO Dealers/Direct Customers/Transporters. The tenderers who accept the L-1 offered rates shall be considered for further allotment of work.

8.RO Dealers offering tank trucks for supplies to RO Dealers having reached an understanding and RO Dealers earmarking owned tank trucks for their own supplies shall be allocated on acceptance of L-1 rate at the first instance.

9.The TTs offered by L-1 tenderers shall be allocated up to the requirement. In case of RO Dealers who have earmarked owner tank trucks for their own supplies and also offered tank trucks for general transportation work, the tank trucks offered for general transportation work shall be evaluated as per original ranking.

10.If the requirement is not fulfilled as per Serial No.8 & 9 above, the TTs from Transporters who have accepted our L-1 rates shall be selected as per their seniority.

11.In case requirement is not met by the criteria at Serial No.7 to 10 above, negotiations/counter offer exercise shall be carried out with the tenderers who are at highest ranking (in order of L-2, L-3 and so on) amongst remaining tenderers who had not accepted L-1 rates. The Tank Trucks offered by these tenderers accepting L-2 rate shall be allocated up to the requirement.

12.Above procedure of meeting the TT requirement form L-2, L-3, L-4. Ln shall continue till the entire requirement is fulfilled.

13.The technically qualified SC/ST/MSME tenderers shall be ranked separately. Tank Trucks offered by these technically qualified SC/ST/MSME tenderers shall be allocated as per Govt. of India directives and shall have preference at each step of the evaluation above.

14.The requirement of 12 KL and 18KL and above upto 24 KL mentioned above in the tender document is indicative. Corporation may revise the number of 12 KL and 18 KL and above upto 24 KL as per the offers received in this Tender and finally selected as per the above Evaluation Criteria.

15.The reservation for SC/St and MSEs shall apply to this tender.

16.Notwithstanding any other condition/provision in the tender documents, in case of ambiguity or incomplete documents pertaining to PQC, bidders shall be given only one opportunity with a fixed deadline after bid opening to provide complete and unambiguous documents in support of meeting the PQ Criteria. In case the bidder fails to submit any document or submits incomplete documents within the given time, the bidders tender will be rejected.

17.The original document verification during tender evaluation may be carried out at a time decided by IOC for PQ item no.4 (requirement of valid certificate of Registration for Transporters/Dealers). The evaluation for PQ item no.6, 7 & 8 shall be on the basis of consent given by the bidders in the tender form. The original document verification for item mentioned in Sr.No.2, 3 & 5 shall be carried out by their respective SO/locations after final selection of the TTs. The bidders shall fill the details of ownership of TTs, Age of TT, RTO Registration and CCOE License as per Sr.No.2, 3 & 5 at appropriate place in the tender document. There will be no verification of these documents at the time of tender evaluation. The parties will be selected on the basis of information submitted by them in the tender document. These credentials shall be verified by the respective SO/locations for which the TT is finally selected. Please note that in case, it is found that the information submitted in the tender document is not correct, suitable action as deemed fit including forfeiture of EMD shall be taken. Hence, bidders are advised to submit correct information in the tender document.

Note: PQ item no.4 to be submitted by the successful bidder within 15 days on issuance of LOI, and then only work order will be issued, failing which no work order will be issued. No extension of time shall be permitted.

12.The petitioner in W.P.No.32266 of 2016 submitted his bid, offering 6 Tank Trucks under General Transporter Category and the age of the said Tank Truck viz.,TN 23 S 9969 (manufactured on 01.01.2001) as on the due date of submission of the tender was 15 years and 14 days. Since the Tank Trucks' age exceeded 15 years, the said Tank Truck was not eligible for consideration. After removal of the said Tank Truck, the petitioner owned 3 Trucks and also attached 2 Trucks and the average age of the fleet offered for 5 TTs was 3594 days. So far as the petitioner in W.P.No.32267 of 2016 is concerned, he submitted his bid for 5 Tank Trucks with average age of the fleet at 2961 days. The petitioner in W.P.No.32268 of 2016 submitted the bid for 7 Tank Trucks with average age of the fleet at 3240 days.

13.The L1 rate received by the respondents is -10% (less) and the number of TTs offered by the original bidders were 308 and 254 Tank Trucks of 12 KL and 18 KL and above respectively. The petitioners had originally quoted the rate of -10% and the petitioner in W.P.No.32266 of 2016 was ranked at 61 in the seniority list prepared as per the given Evaluation Criteria Clause III (5). The petitioner in W.P.No.32267 of 2016 was ranked at 46 in the seniority list and the petitioner in W.P.No.32268 of 2016 was ranked at 54 in the seniority list. The number of Tank Trucks available at the disposal of the Corporation at L1 rate is much higher than the requirement given in the tender. The respondents submitted that the total requirement of Tank Trucks has been met within ranking No.35 with average age of fleet at 2231 days. The learned counsel for the respondents also produced the seniority list prepared as per the Evaluation Criteria Clause III (5). Since the petitioners are ranked in lower position in the seniority list, their bids were not considered by the respondents. Though the petitioners were declared as L1 bidders, that does not automatically qualify them to be entitled for award of contract. As per Clause III (8) of the Evaluation Criteria, the retail outlet dealers were offered L1 rate for acceptance of their own supplies and allocated on acceptance of L1 rate at first instance. The petitioners were required to clear the seniority list and other conditions as per the Evaluation Criteria. Since the petitioners have not cleared the seniority list and other conditions as per the Evaluation Criteria stated above, their bids were rejected. When the petitioners have not cleared the Evaluation Criteria, the 5th respondent has rightly rejected the bids submitted by them. Since the petitioners have not fulfilled the Evaluation Criteria, there is no necessity for giving an opportunity of personal hearing. Therefore, in the case on hand, there is no violation of principles of natural justice as contended by the petitioners.

14.In these circumstances, I do not find any error or irregularity in the order passed by the 5th respondent. The Writ Petitions are devoid of merits and the same are liable to be dismissed. Accordingly, the Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

va
To

1. The Secretary,
   Ministry of Petrol and Natural Gas,
   Sastri Bhavan, New Delhi - 110 001.

2. The Chairman,
   Indian Oil Corporation Limited,
   Mumbai - 400 001.

3. The Executive Director,
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   TNSO, 8th Level,
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6. The Deputy General Manager,
   Marketing Division, Korukupet,
   Chennai - 600 021.

+6cc to Mr.S.S.Rajesh, Advocate, S.R.No.70969 TO 70971
+1cc to Mr.J.Madanagopal Rao, Advocate, S.R.No.71056

W.P.Nos.32266 to 32268 of 2016 and
W.M.P.Nos.27983 to 27985 of 2016

SK(CO)
CS/12/10/17