

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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WRIT PETITION Nos.1378 and 1431 of 2017

Between:

M/s.Sri Vinayaka Transport and another.

....Petitioners

and

Indian Oil Corporation,
Rep.by its Chairman,
254-C, Dr.Annie Besant Road,
Worli, Mumbai,
And others.

....Respondents

JUDGMENT PRONOUNCED ON

13.02.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : No

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.1378 and 1431 of 2017

COMMON ORDER:

These two cases are being disposed of by this common order as they relate to the tender notice dated 03.12.2016 issued for award of contract for transportation of bulk petroleum products with effect from 01.03.2017.

The petitioner in W.P.No.1378 of 2017 is the owner of 6 chassis manufactured by Bharath Benz Company. The said chassis have to be fitted with 20 KL oil tanks. In pursuance of the tender notice issued by the third respondent, the petitioner submitted the tender on 03.12.2016 on e-platform. During the informal conversation with the Marketing Division Officials of the respondent Corporation, the petitioner came to know that they would carry forward 53 unfilled quota of Tank Trucks belonging to SC/STs offered to them earlier in the tender notification dated 03.10.2013 to the present tender notification and also informed that they would treat both 12 KL and 18/20/24 KL Tank Trucks as one unit instead of separate units in applying reservation policy. In the earlier tender notice dated 03.10.2013, the tank truck requirement was 170 numbers of 12 KL Tank Trucks and 80 numbers of 18/20/24/40 KL Tank Trucks. But, only about 170 Tank Trucks of 12/18/20/24/40 KL participated in the bid. As there was no competition, all the tank trucks were accepted and were

given contract. In respect of SC/STs, only 3 or 4 Tank Trucks participated and all were granted contract. It is the case of the petitioner that, if the unfilled quota is carried forward, the present requirement of 60 tank trucks would come down and the chances of getting the contract would be curtailed. It is also the case of the petitioner that all 18/20/24 KL Tank Trucks shall form into one category, whereas 12 KL tank trucks form into separate category, and hence, they shall be treated differently.

The case of the petitioner in W.P.No.1431 of 2017 is that he purchased six 1616 IL new chassis manufactured by Ashok Leyland Company and they have to be fitted with 12 KL Oil Tanks. He also submitted a tender on 03.12.2016 in the category of 12 KL Tank Trucks. In his case he specifically pleaded that the tenders of the tenderers, who procured proforma invoices of new chassis by paying token amount and without paying full purchase amount, are being considered along with other tenderers and it is contrary to the tender conditions. He also stated that the average age of the fleet or age of the vehicle cannot be ascertained in the absence of Sale Certificate.

In W.P.No.1378 of 2017 a counter affidavit is filed stating that the technical bids had already been opened and the documents are under evaluation by the tender committee. It was further stated that the tender was floated on 04.11.2016

and they were closed on 03.12.2016. The tenders were opened on 05.12.2016 and as per the previous tender conditions, if there is any unfulfilled quota of SC/ST, it was stated that the same would be carried forward to the next tender. In pursuance of the same, the present tender was issued. However, with regard to the contention of the petitioner that all trucks having capacity of 12 KL and 18/20/24 KL are being treated as one unit is not correct and 12 KL capacity Tank Trucks and 18/20/24 KL Tank Trucks are treated separately for applying reservation for SC/ST. It is also stated that they would apply reservation policy separately for 12 KL Tank Trucks and other trucks. It was undertaken that the respondent Corporation would abide by the terms and conditions of the previous tender and also the current tender while applying reservation policy for SC/ST bidders and would treat 12 KL capacity Tank Trucks separately and 18/20/24 KL capacity Tank Trucks separately while applying reservation percentage.

A separate counter affidavit is filed in W.P.No.1431 of 2017 stating that the age of Tank Trucks would be ascertained as per the terms and conditions at page No.4 item IV(2).

In the light of the above contentions, learned Counsel for the petitioners submitted that the only point that survives for consideration in W.P.No.1378 of 2017 is with regard to the carry forward of the unfilled quota in the previous tender notice to the present tender notice, as the other contentions were accepted

by the respondents. He further submitted that in respect of W.P.No.1431 of 2017 the contention that remains for consideration is with regard to the proforma invoices that are being accepted while considering the tenders.

Learned Senior Counsel for the respondents submitted that the carry forward of unfilled quota to the next tender was a condition in the previous tender and there is nothing wrong in doing such an exercise. He further submitted that they have been taking the proforma invoices where the chassis numbers and dates of purchase are clearly mentioned and if the date of manufacture is not found, they are not considering such invoices.

In view of the above submissions of the learned Counsel, this Court is not impressed with the submission of the learned Counsel for the petitioners that the respondent Corporation cannot carry forward the unfilled quota in the previous tender notice. It is an admitted case that in the previous tender notice it was categorically stated that in case of unfilled quota for SC/STs, the same would be carried forward to the next tender notice and the present tender was issued with the same stipulation. Though the learned Counsel for the petitioners pointed out that by virtue of carrying forward such unfilled quota, the chances of the petitioner came down, this Court is not impressed with such submission. It is for the employer to stipulate the conditions with regard to the procurement of

trucks and unless such condition is violative of any law, this Court cannot interfere. Since the other contentions raised by the petitioner in W.P.No.1378 of 2017 were clarified in the counter affidavit, nothing survives for consideration in the said Writ Petition, and the said Writ Petition deserves to be disposed of.

So far as W.P.No.1431 of 2017 is concerned, learned Senior Counsel appearing for the respondent Corporation clearly submitted that they have been taking the invoices containing the year of manufacture only and if the invoices do not have such year of manufacture, they will not take the same into consideration while evaluating the tenders as the age of the trucks is one of the criteria. There is no dispute that the tender conditions stipulate the ownership of the vehicles by the tenderers or hiring of the same by possessing the RC book or invoices. Invoices cannot be proforma invoices, but sale invoices clearly specifying the chassis numbers and dates of purchase. If the invoices do not contain the date of manufacture, the respondents need not take the same into consideration while evaluating the tenders. If the respondents are taking such type of sale invoices, they will be violating the conditions of tender.

However, in view of the submission of the learned Senior Counsel appearing for the respondents, W.P.No.1431 of 2017 is disposed of directing the respondents to consider the cases of

the tenderers who submitted invoices clearly containing the dates of manufacture of the vehicles/chassis only and evaluate the tenders.

In view of the above, W.P.Nos.1378 and 1431 of 2017 are disposed of. The miscellaneous petitions pending in these Writ Petitions, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

13.02.2017
vs

