

CWP No. 3453 of 2016

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 3453 of 2016
Date of Decision : 01.03.2017**

Ranga Oil Carrier and others

...Petitioners

Versus

Union of India and others

...Respondents

AND

CWP No. 9506 of 2016

M/s Sai Oil Carrier

...Petitioner

Versus

Union of India and others

...Respondents

**CORAM: *HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
 HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL***

Present: Mr. Kshitij Sharma, Advocate for the petitioners.

Mr. Ravindra Singh, Advocate for respondents No. 1 and 3.

Mr. Ashish Kapoor, Advocate for respondent No. 2.

Anupinder Singh Grewal, J.

1. These two writ petitions are being decided by a common order as they raise similar questions. For the sake of convenience, facts are being referred from CWP No.3453 of 2016.

2. The petitioners have sought quashing of selection by the respondents in pursuance to the detailed notice inviting tender dated 09.10.2014. They have also sought quashing of order dated 16.05.2015 [Annexure P-7 (Colly)], whereby the technical bid of petitioners No. 1, 2 and 3 (CWP No. 3453 of 2016) has been rejected. The petitioners further challenge notice dated 18.01.2016 (Annexure P-12), whereby the Indian Oil Corporation Limited (IOCL)-respondent No. 2 has called only the existing Transporters/Dealers to supply tank trucks against additional requirement. The petitioners have also sought a direction for a fair and impartial probe in the alleged misconduct of respondent No. 2 and its officials.

3. Learned counsel for the petitioners has contended that as respondent No. 2 had resorted to e-bidding in the afore-noted tender for the first time, the petitioners had raised concerns about the same but the apprehensions of the petitioners was disregarded by the respondents. He further contended that the technical bids of petitioners No. 1, 2 and 3 have been rejected arbitrarily and on wholly irrelevant consideration. He has also contended that respondent No. 2 is meeting its additional requirement by resorting to Condition No. A – Clause 10(b) but the petitioners and other similarly situated persons are being arbitrarily held ineligible for the same, although they have experience of 10 to 20 years in the field. The respondents have manipulated the bids to accommodate their favourites and illegitimate benefit has been granted to selected/existing transporters by inviting them to the exclusion of others for additional 30 tank trucks.

4. Per contra, learned counsel for the respondents contend that the

technical bids of the petitioners were not accompanied by essential documents and, therefore, rejected. They also contend that respondent No. 2 has withdrawn the notice inviting tender dated 18.01.2016 and the Corporation has not initiated any new tender process as yet and additional demand of trucks is being met by it through exercising its right under Clause No. A – 4(e) & (f), A – 10(b) and A – 13 of the Tender Terms and Conditions.

5. The respondent No. 2 issued a detailed notice inviting tender on 09.10.2014, wherein it spelt out requirement of 342 12 KL and 296 18 KL tank trucks for transportation of motor speed/high speed diesel from Panipat to the rest of India. The tender was to come in effect from 14.11.2014 or at a date to be decided at the discretion of the company for a period of three years with option for extension upto further two years at the sole discretion of the company.

6. The bid of petitioner No. 1 has been rejected as it had not furnished the requisite undertaking on blacklisting of the tank trucks offered. The bid of petitioner No. 2 has been rejected as it had not submitted CCOE certificate for all tank trucks while bid of petitioner No. 3 has been rejected as it had submitted illegible and unreadable copies of Registration Certificate and CCOE licence. In view of the petitioner's allegations against the Officers of the respondent No. 2, an interim order was passed on 11.05.2016 directing a senior officer of the National Informatics Centre stationed in this Court to appoint any officer stationed in New Delhi or deputed with this High Court as a Commissioner to

ascertain :-

- i) *Whether the petitioner No. 1 uploaded the documents at page Nos. 58 and 140 to 146 along with the bid.*
- ii) *Whether the petitioner No. 2 uploaded the CCOE licence along with the bid.*
- iii) *Whether the uploaded shot of the Registration Certificate & CCOE is legible or not.*

7. The Technical Director, NIC and Section Officer, NIC inspected the documents uploaded by petitioners No. 1 and 2 and submitted their report, which is reproduced hereunder:-

“Report on the proceedings held on 13th May 2016, at 11.00 a.m. in the office of:

*Sh. Rajen Sarkar, Chief Manager (Operations)
Indian Oil Corporation, Delhi State Office
World Trade Centre, Babbar Road, New Delhi.*

Reference order passed by Hon'ble the Acting Chief Justice and Hon'ble Mr. Justice Arun Palli, Hon'ble Court has directed to appoint any officer of NIC stationed in New Delhi or deputed with this High Court as a Commissioner to ascertain:-

- i) *Whether the petitioner No. 1 uploaded the documents at page Nos. 58 and 140 to 146 along with the bid.*
- ii) *Whether the petitioner No. 2 uploaded the CCOE license along with the bid.*
- iii) *Whether the uploaded shot of the Registration Certificate & CCOE is legible or not.*

Based on the directions of Hon'ble High Court, Ms. Usha Saxena, TD NIC HQs was appointed and attended the proceedings on 13th May 2016 at 11.00 am. The following were present during the proceedings:

- 1. *Sh. Ghanshyam Dass, Section Officer, NIC*
- 2. *Sh. Rajen Sarkar, Chief Manager (Operations), IOCL*

3. *Sh. Mandeep Singh, Asstt. Mg (RC), Panipat, IOCL*
4. *Sh. Kuldeep, Authorised representative of M/s Range Oil Carrier*
5. *Sh. Naresh Kumar*
6. *Sh. Sajjan Kumar*
7. *Sh. Jaswant Singh*

Sh. Rajen Sarkar, Chief Manager (Operations), IOCL logged into the Indian Oil eTendering portal (<https://ioctgenders.gov.in>) and opened the specific tender 2014_DLSO_10186_1

Sh. Rajen Sarkar opened each documents uploaded by the Bidder M/s Range Oil Carrier against the Bid ID 85399. The document mentioned in Query 1 could not be located.

Sh. Rajen Sarkar opened each documents uploaded by the Bidder Sh. Jaswant Singh against the Bid ID 85257. The document mentioned in Query 2 could not be located.

The document mentioned in Query 3 does not provide much clarity. However, it is for Indian Oil Corporation to decide if they are able to get required information from the same.

-sd-

(USHA SAXENA)

Tech Director, NIC

Date: 17.05.2016

-sd-

(Ghanshyam Dass)

Section Officer, NIC”

8. It is, thus apparent that the documents which have been stated to be uploaded by petitioner Nos. 1 and 2 could not be located while the issue pertaining to petitioner No. 3 could not be opined with any degree of certainty. A doubt was expressed about the correctness of the report. It is not possible, however, in a petition under Article 226 to ascertain with any defence of certainty whether or not the report is incorrect. The least that must be said is that this raises disputed questions of fact, which cannot be

9. The relevant terms and conditions of the tender are reproduced hereunder:-

(a) to (d)

Xxxx

(f) Award contracts to additional RO dealers/direct customers in response to their offer of TTs for their own load requirement at any time for the balance period of contract.

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10(b) IOCL at its sole discretion reserves the right to induct additional tank trucks from RO Dealers/Direct Customers of IOCL offering tank trucks only for their own supplies, RO Dealers offering tank trucks for supplies to consortium of RO Dealers and RO Dealers earmarking owned tank trucks for their own supplies, who shall qualify under this tender, to meet their incremental demand.

[illegible]

13. *The estimated number of Tank Trucks shown in tender notice is indicative and is subject to change. IOCL reserves the right to contract additional Tank Trucks.*

(C)

Regarding that no manual bids/offers along with electronic bids/offers shall be permitted and that Tenders not meeting the Tender Terms and conditions or incomplete in any respect or with any additions/deletions or modifications are

liable to be summarily rejected.

Clause 10 of the tender document reads as under:

Bids in physical form will not be acceptable. Bidder(s) are advised to quote strictly as per terms and conditions of the tender documents for e-bidding through IOCL E-tender portal <https://iocletenders.gov.in>

xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx

How to submit On-line bids/offers electronically against E-tendering?

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- (iii) No bid can be modified after the dead line for submission of bids.*
- (iv) No manual bids/offers along with electronic bids/offers shall be permitted.*

Clause 8 reads as under :-

“8. Tenders not meeting the Tender Terms and conditions of incomplete in any respect or with any additions/deletions or modifications are liable to be summarily rejected without any further communication to the tenderer and decision of IOCL in this regard shall be final and binding.”

(D)

List of documents to be submitted with the tender:

A tenderer was required to submit following documents with the technical bid.

- (1) Covering letter listing all enclosures.*
- (2) Particulars of Tenderer*
- (3) Particulars of T/T's offered*
- (4) Scanned copy of DD for EMD drawn on a scheduled Bank payable at Panipat*
- (5) All documents as required have been uploaded on*

the e-tender portal at the appropriate place. Percentage is quoted only in the price bid and not quoted anywhere in the technical bid.

- (6) Undertaking for the TTs offered (Attachment-1)*
- (7) Affidavit/s from the owners of the attached TTs (Attachment-2)*
- (8) Details of relationship with Directors of IOCL and Declaration 'I', 'II' and 'III' (Attachment-3).*
- (9) Caste certificate (wherever applicable) issued by Competent Authority as per format (Attachment-4)*
- (10) Power of Attorney (Attachment-5)*
- (11) Undertaking by RO dealers of the consortium (wherever applicable)(Attachment-6)*
- (12) Attested copy (acknowledged copy) of the latest Income Tax Return Filed*
- (13) Letter from Divisional Manager giving the details of firm, SAP code and Name of the Proprietor and partners (applicable to dealers)*
- (14) Attested copies of valid Registration Certificate and CCOE License, for each of the TTs offered. (Insurance, Certificate of Fitness and Calibration certificate will be required during physical verification of TTs after LOI issuance.*
- (15) Certificate of Registration for transporters under Carriage by Road Act 2007 released by Ministry of Law and Justice vide Gazette Notification of India dated 01.10.2007.*
- (16) Bank Guarantee for Security Deposit (Attachment-7)*
- (17) Bulk Petroleum Products Road Transport Agreement (Attachment-8)*
- (18) Industry Transport Discipline Guideline (Annexure to bulk petroleum product road transport agreement)*

- (19) *Integrity Pact Agreement (Attachment-9)*
- (20) *Undertaking that TT will be fit with Anti Lock Braking System (ABS) conforming to IS:11852:2003 on issuance of LOI, before issuance of Work Order.*
- (21) *Bidder shall give an undertaking on their letter head that the content of the bidding document has not been altered or modified. Any change in bid document or conditional bid is liable to be summarily rejected.*
- (22) *Undertaking that fitting of SS locking with single lock system in line with specifications/drawing provided.”*

10. Clause 8 of the tender document mandates that any tender, which is incomplete in any respect, would be rejected at the very threshold. In the list of documents to be submitted with the tender, it is stipulated in Item No. 14 of Technical Bid that attested copies of valid registration certificate and CCOE license has to be submitted with the tender document. The bids of the petitioners being without the necessary documents or illegible were, thus, rejected by the respondents. The petitioner in CWP No. 9506 of 2016 had failed to upload the tender documents along with his technical bid and, therefore, his bid was not found to be responsive. It is also stated by the respondents that Gaje Singh, who is Proprietor of M/s Ranga Oil Carrier, (the petitioner No. 1 in CWP No. 3453 of 2016) had offered two tank trucks by attaching them with M/s Satnam Transport Company, which have been allocated work and this factum had been concealed in the petition.

11. We do not find any illegality in the respondents treating these

documents as qualifying documents and in absence thereof holding the bids to be unresponsive. Interference by a writ court in such matters would be called for in case of arbitrary, unreasonable or illegal act on the part of the authorities. Judicial review is confined to the manner in which the decision is taken rather than the decision itself.

12. Therefore, the petitioners have not been able to make out a case of misconduct on the part of the officers of the respondent No. 2 in this petition, which would persuade us to direct further action in respect thereof. Such allegations would require evidence in appropriate proceedings. Official respondents are always at liberty to enquire into the matter regarding the conduct of the officers.

13. Furthermore, the petitions would also be liable to be dismissed on account of delay and laches. The rejection of the technical bids of the petitioners were conveyed to them on 16.05.2015. The CWP No. 3453 of 2016 has been filed on 16.02.2016 while CWP No. 9506 of 2016 has been filed on 10.05.2016. In tender matters, a party which seeks to challenge the action of the authorities must do so promptly as after lapse of time especially with the allocation of the tender third party rights are created and ordinarily it is difficult for writ Court to balance the equities while interfering with such matters at that stage.

14. It has been stated by respondent No. 2 in its reply that it has decided to withdraw the impugned tender notice dated 18.01.2016 for allocation of additional tank trucks to meet its requirement. However, we deem it necessary to dwell on this issue of allocation of additional tank

trucks.

15. It is apparent from reading of afore-noted Clauses A-4 and 10 (b) that the IOCL at its sole discretion reserves the right to induct additional tank trucks from eligible outlet dealers as well as its direct customers. The dealers have to qualify under the tender to be eligible for supplying additional tank trucks. In terms of Clause A-4, the respondent No. 2 reserves the right at its sole discretion without assigning any reason whatsoever to engage additional contractors/tank trucks at any time without giving any notice whatsoever to the contractors already appointed against this tender.

16. We are of the considered view that Clause A-4(e), (f) and 10(b) does not give unfettered and unbridled power to the IOCL to act arbitrarily while exercising its discretion. Discretion has to be exercised by a public authority on sound and reasonable principles and in a fair manner. Absolute discretion would strike at the very foundation of Article 14 of the Constitution of India and would be prone to arbitrary action on the part of public authorities. It is true that the IOCL deals in essential commodities and some leeway should be provided to it in meeting its requirement of supplying petroleum products but at the same time it should not act at its whims and fancies.

17. It has been stated by respondent No.2 that after finalising the tender all retail outlet dealers (petrol pump owners) including those who did not qualify in the tender or had not participated in the tender were given additional contracts for their own supplies by invoking Clause A-4(f) of the

terms and conditions. It is further stated that in November, 2015 a policy decision had been taken by respondent No.2 that in case requirement of additional tank trucks is not met through existing dealers and transporters at L-1 rate then public EOI has to be floated where dealers and transporters who had been technically disqualified or not awarded contract because of NIT restrictions/higher quoted rate or any other reason except forgery or mis-representation can quote against EOI and on being successful can be awarded a contract at established L-I rate. Whatever be the system it must conform to the standards of reasonableness and fairness and the respondent No. 2 must adhere thereto.

Therefore, we are unable to interfere with the action of the respondent No. 2 in treating the technical bids of the petitioners as non-responsive. However, the petitioners would be at liberty to avail alternate remedy available to them under the law.

The petitions stand disposed of accordingly.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

01.03.2017.

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Whether speaking/reasoned? Yes

Whether reportable? Yes/No