

**HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**

**WRIT PETITION No.30737 OF 2018**

**O R D E R :**

This writ petition is filed challenging the action of the 1<sup>st</sup> respondent in cancelling the Letter of Intent (LOI) granted to the petitioner with respect to Tank Lorry No.AP 31 TD 6246.

Learned counsel for the petitioner submits that when once the documents of the petitioner were accepted, without issuing any notice the LOI sought to be cancelled on the ground that the petitioner mentioned the model of the subject vehicle i.e. Tank Lorry No.AP 31 TD 6246, as 2017 instead of 2013. He further submits that the subject vehicle was registered in the year 2013, but later the same was transferred by the father of the petitioner in favour of petitioner who is the proprietor of the petitioner firm on 11.10.2017; and that RC book submitted by petitioner shows the date of registration as 11.10.2017. He also submits that subsequent registration in favour of petitioner cannot be a ground for cancellation of LOI; and that in pursuance to the grant of LOI, petitioner has complied all the formalities and that work order was given to the petitioner by letter dated 02.05.2018. He further submits that there is no mistake committed by the petitioner entailing in cancellation of LOI.

On the other hand Sri B.Mayur Reddy, learned Standing Counsel for respondent Corporation submits that as on the

date of filing writ petition there is no order of cancellation of LOI; and that the writ petition is premature. However, on instructions he has produced a copy of the cancellation order dated 17.05.2018 and submits that the petitioner along with tender documents has filed attachment No.2 mentioning about the particulars with regard to make and model of the subject tank lorry wherein he has stated the model of the subject lorry as 2017; and that the documents filed in the writ petition at page No.10 is not the same document which is submitted before the authorities at the time of filing tender document. He also submits that in the subsequent declaration also he has mentioned the model of the subject lorry as 2017 and basing on the same, the LOI was granted in favour of the petitioner. He also submits that on subsequent verification it was found that the subject vehicle was registered in the year 2013 and later it was transferred in the name of petitioner in the year 2017. He further submits that the petitioner has mentioned the date of subsequent registration as model of the vehicle. Since the petitioner made false declaration, LOI was cancelled by virtue of clause-8 of the Tender Conditions. He also submits that in case of any disputes, as per clause 12(d) of the tender conditions, the aggrieved party can approach the Independent External Monitor appointed to oversee implementation, but the writ petitioner straight away filed the writ petition.

As on the date of filing writ petition, there is no order of cancellation of LOI. Only basing on the internal communication dated 17.05.2018, present writ petition is filed.

In the aforesaid internal communication dated 17.05.2018 it is stated as follows;

*“The t/I (AP 31 TD 6246) of M/s.Durga Srinivasa Transport for which LOI was given was originally registered in 2013 as per AP Transport Dept. web site and the RC book submitted by them shows 11/10/2017.*

*View above, we will be cancelling the LOI and hence, please do not accept BG and sign transport agreement with them.”*

But the fact remains, by the time of hearing, order dated 17.05.2018 was passed by the respondents cancelling the LOI as per clause-8 of the tender conditions as petitioner has misrepresented the fact that the subject vehicle was registered in the year 2017 though first registration of vehicle was in the year 2013.

In the record produced by the learned Standing Counsel the attachment No.2 annexed to the tender documents by the petitioner shows that petitioner has categorically mentioned that the model of the subject vehicle is of the year 2017, and the document filed at page 10 along with the writ petition it is mentioned as 2013. When the said fact is pointed out to the learned counsel for the petitioner, he stated records should be

called for, as such this Court called for the records. In the records a false declaration was given by the petitioner stating Model of the vehicle as 2017. By filing a different document in the writ petition, petitioner is claiming relief. Petitioner has not come to the Court with clean hands.

Tender Condition No.15 of Clause-B and Condition No.10 of Clause-D of Terms and Conditions reads as follows;

**“15. Age of Vehicle:** Age of tank-lorry offered should not exceed 14 years as on date of publishing tender (NIT). In case of statute orders resulting in change of tank lorry age norms, the same will be applicable from time to time. Age of Tank lorry shall be reckoned from the Date of 1<sup>st</sup> registration.

The tank-lorries attaining the age of 15 years during the contractual period shall be removed from the contract. Replacement within 30 days with another tank-lorry having age of less than 15 years will be the responsibility of the concerned carrier.”

“10. In case, for a particular ranking if the tank-lorries offered are more than the requirement then the tank-lorries will be taken based on the following order of priority:

a) Owned TLs offered shall be considered for allocation subject to maximum allocation per tenderer not exceeding 10% of the total tender requirement. For this evaluation of 10%, the lowest age Tank Lorries offered by each tenderer shall be considered. Age of the tank lorry shall be reckoned from the date of 1<sup>st</sup> registration.

b) In case the number of shortlisted TLs as a) above is more than the requirement, then tank lorries

shall be allocated based on lower age of the tank lorries.

c) In case the number of shortlisted TLs as a) above is less than the total requirements, then Own TLs offered by tenderers in excess of 10% of total tender requirement shall be considered to meet the balance requirements following priority to lower age tank lorries.

d) In case requirement of tank lorries is not met with above a) & c), then attached Tank lorries offered by tenders shall be considered for allocation with priority to lower age tank lorries till the total tender requirements is fulfilled.

e) In case of tie for the last Own or Attached tank lorry selection, the priority shall be given to tenderer offering higher total number of tank lorries.”

As per the afore-stated tender conditions, age of the vehicle is the criteria for awarding the contract. Further when it was put to learned counsel for the petitioner whether the writ petitioner wants to avail alternate remedy, he argued the matter on merits and insisted that order should be passed on merits.

In view of the above facts and this Court is not inclined to entertain the writ petition by exercising extraordinary equitable jurisdiction under Article 226 of the Constitution of India. The writ petition is liable to be dismissed with exemplary costs.

Accordingly, the writ petition is dismissed with costs of Rs.20,000/- payable by the petitioner in favour of High Court Legal Services Committee, High Court of Judicature at Hyderabad, to recover the same.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

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**A.RAJASHEKER REDDY, J**

30.08.2018  
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