IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 7809 of 2017 (O&M)
Date of Decision:24.09.2018

Ranga Oil Carrier through its proprietor and another ..Petitioners

versus

Indian Oil Corporation Ltd. …..Respondent

CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present : Mr. Suneel Ranga, Advocate, for petitioner No.1.
Mr. Kshitij Sharma, Advocate, for petitioner No.2.
Mr. Ashish Kapoor, Advocate with
Mr. M.S.Rana, Advocate, for the respondent.

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KRISHNA MURARI, CHIEF JUSTICE (oral)

Heard Shri Suneel Ranga and Shri Satish Sharma, learned counsel appearing for the petitioners and Shri Ashish Kapoor alongwith Shri M.S.Rana, learned counsel appearing for the respondent.

2. Petitioners are the proprietorship concern engaged in the business of transportation of fuels mainly by tankers and trucks. Respondent-corporation is a Public Sector Undertaking engaged in the business of refining, supply and marketing of crude oil and petroleum products.

3. Challenge in this petition has been made to notice dated 24.03.2017 inviting applications from the existing transporters for providing 30 Nos. of additional TT's (10 No. of 12 KL and 20 No. of 18 KL) for transportation of MS/HSD at PMC to various retail outlets/consumers attached to PMC. The notice required all the transporters and retail outlet

dealers having contract for running TTs in PMC against public tender No.DSO/OPS/POL-MH/BULK/2014-19/PMC/03 could make a bid as per the aforesaid public tender. It is pertinent to mention at this stage that as per the tender documents referred to above, the requirement was 342 TTs for 12 KL and 296 TTs for 18KL and above. However, the tender document clearly stated the estimated tank trucks (hereinafter referred to as "the TTs") was indicative and subject to change.

4. Learned counsel appearing for the petitioners vehemently contended that the notice is completely against the true and intent purport of DNIT which emphasized on induction of additional tank trucks and discretion of the Indian Oil to engage the additional Directors apart from the contractors already appointed against the DNIT and the impugned notice inviting tender only from existing contractors is directly in the teeth of the DNIT.

5. It is next contended that the petitioners being engaged in the business of tank trucks have a legitimate expectation to participate in the tender process in case there is a requirement of the tankers-trucks by the respondent-corporation especially when the remaining period is till 2019 and the impugned notice only confining the process to existing contractors excluding all others is violative of Article 14 of the Constitution of India. It is also pointed out that the concept and the manner of filling up additional requirement is simply a straight way of the respondents to adjust the persons of their own choice to the exclusion of all others which is not legally permissible.

6. Learned counsel appearing for the respondent-corporation in reply vehemently contended that the requirement indicated in the NIT dated 07.11.2014 was tentative and dependent upon various factors, the same could increase or decrease. It is further pointed out that for fulfilling the requirement the lowest price has to be established and thereafter eligible quoted tank-trucks were to be allocated in 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 rates and thereafter at a higher negotiated rate in order of ranking.

7. Referring to the averments made in the written statement, learned counsel for the respondent-corporation points out that as per the records, number of eligible tank trucks offered by the bidders for 2014 tender were in excess of the estimated/projected requirement therein and thus several bidders who had quoted eligible tank trucks had not been issued any Letters of Intent. It may be relevant to extract the following relevant averments from the written statement filed on behalf of the respondent-corporation:-

> "In fact additional TTs are not inducted regularly and the requirement is assessed during the contract period, which could be due to increase sales, commissioning of new Retail Outlets, new Consumer Business, shortfall due to blacklisting of TTs, existing transporters not giving replacement of TTs which have attained 15 years of age etc.
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> It is submitted during the month of November, 2015, a policy decision has been taken that in case requirement of additional TTs is not met through existing dealers/dealer-transporter/transporter at L-1 rates then public EOI has to be floated where the

dealer/dealer-transporter/general transporters who had been technically disqualified/not awarded contract because of NIT restrictions/higher quoted rate or any other reason except forgery/misrepresentation, can quote against EOI and on being successful can be awarded at established L-1 rate. Copy of the policy circular is attached as Annexure R-1.

Presently, M/s IOCL vide notice dated 24.03.2017 has sought offers for additional TTs from existing transporters/qualified bidders and RO dealers only. In the event requirement of additional TTs is not met through this route then IOCL might go in for calling Public EOI where the dealer/dealer-transporter/general transporters who had been technically disqualified/not awarded contract because of NIT restrictions/higher quoted rate or any other reason except forgery/misrepresentation can participate.

That the existing transportation contract for transportation of MS/HSD ex-Panipat has been made operative w.e.f. September, 2015. Initially IOCL had taken 388 TTs of 12kl and 296 TTs of 18KL & more. During 2015-16, IOCL had inducted 114 dealer owned TTs. During 2016-17, IOCL has inducted 34 Dealer owned TTs. However, IOCL has not taken additional tank trucks from general transporters till date. It is again reiterated that additional TTs are not inducted regularly and the requirement is assessed during the contract period, which could be due to increase sales, commissioning of new Retail Outlets, new Consumer Business, shortfall due to blacklisting of TTs, existing transporters not giving replacement of TTs which have attained 15 years of age etc."

8. Referring to above averments in the written statement and clauses 13 and 4 of the General Terms and Conditions of the tender, it is submitted that it was in the discretion of the respondents to fill up the additional requirement from the existing contractors. To resolve the

controversy it may be relevant to examine the relevant tender conditions. Clause 13 of the General Terms and Conditions reads as under:-

> "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."
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> 4. IOCL reserve the right, at their sole discretion, and without assigning any reason whatsoever, to:-
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> a) Negotiate with any or all tenderers,
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> b) Divide the work among contractor(s),
>
> c) Reject any or all tenders either in full or in part,
>
> d) Assign the offered and accepted Tank Trucks to any of the contracts, and
>
> e) Engage additional contracts/Tank Trucks at any time without giving any notice whatsoever to the contractor/s already appointed against the Tender.
>
> 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."

9. It may also be relevant to reproduce Clause 10 of the General Terms and Conditions of the tender:-

> "10(a) IOCL existing RO Dealers/Direct Customers can participate in this tender for award of transport contract. IOC reserves the right to give preference to award transport contract to its RO Dealers/Direct Customers for transporting their own load requirements subject to their acceptance of L-1 rates offered by the company at first instance. RO Dealers/Direct Customers not accepting L-1 rate offered by the company at first instance shall be treated at par with other tenderers and shall be evaluated based on their original ranking.
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> (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."

10. Clause 13 of the General Terms and Conditions quoted above stipulates that the estimated number of tank trucks specified in the tender notice is indicative and subject to change. Similarly clause 4 (e) and (f) stipulates that during the pendency of the contract, if additional tank trucks are required, then the rights stand reserved in the IOCL to engage additional contractors/tank trucks at any time without giving any notice to the contractors already appointed against the tender or to award contracts to additional RO/Dealers/direct customers. Thus, under the terms and conditions of the tender, there is absolute freedom to the respondents to hire any truck for fulfilling the additional requirements either by engaging additional contractors/tank trucks without any notice to the contractors already appointed or even from the existing transporters.

11. In the absence of any terms and conditions to the contrary, the right of the respondent-corporation to call upon the existing transporters to supply additional tank trucks under Clause 4(f) is its obligation and gives a corresponding right to the existing contractors to insist upon the demand for additional trucks being met by the corporation from the existing contractors.

12. In the case of ***Central Coalfields Ltd. and another v. SLL-SML (Joint Venture Consortium) and others 2016(8) SCC 622,*** relying upon the following observations made in paragraph-7 of the judgment in case ***Ramana Dayaram Shetty v. International Airport Authority of India (1979) 3 SCC 489,*** it was held that the terms of NIT cannot be ignored as being redundant or superfluous and they must be given a meaning and the

necessary significance. In the case of ***Ramana Dayaram Shetty's case (supra)***, it was observed in paragraph-7 as under:-

> "7...........It is a well settled rule of interpretation applicable alike to documents as to statutes that, save for compelling necessity, the court should not be prompt to ascribe superfluity to the language of a document "and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use". To reject words as insensible should be the last resort of judicial interpretation, for it is an elementary rule based on common sense that no author of a formal document intended to be acted upon by the others should be presumed to use words without a meaning. The court must, as far as possible, avoid a construction which would render the words used by the author of the document meaningless and futile or reduce silence any part of the document and make it altogether inapplicable."

13. In the case of ***Jagdish Mandal v. State of Orissa (2007) 14 SCC 517,*** Hon'ble Apex Court while considering the power of judicial review in matters relating to tenders and award of contracts has observed as under:-

> "22. ......Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review,

> interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold."

14. Apex Court then laid down the questions that ought to be asked in such a situation and if answers are negative there should be no interference under Article 226 of the Constitution of India. It was thus observed:-

> "22....Therefore, a Court before interfering in the tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:-
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> (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;
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> OR
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> Whether the process adopted or decision made is so arbitrary and irrational that the court can say; "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached".
>
> ii) Whether public interest is affected."

15. Applying the above principles laid down by the Hon'ble Apex Court to the facts of the case, it is more than apparent that the decision taken by the respondent-corporation is in accordance with the General Terms and Conditions of the tender and cannot be said to be irrational or arbitrary in any manner nor there is anything on record to indicate that it is intended to favour anyone.

16. In the result, the writ petition is devoid of merits and stands dismissed. However, in the circumstances, we do not make any order as to costs.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

24.09.2018
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Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No