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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3878/2018 & CM APPL. 15302-15303/2018**

ASIAN PACIFIC BULK MOVERS & ORS. Petitioners
Through Mr. Siddharth Batra, Advocate on
Record with Ms. Kushagra Bansal,
Ms. Garima Sehgal and Mr. Ravinder
Kumar, Advocates.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Manish Mohan, CGSC for R-1.
Ms. Mala Narayan, Ms. Neha Dawar
and Ms. Madhumanti Ghosh, Advs.
for R-2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **09.05.2018**

The petitioner challenges the tender condition-rather a restriction introduced by way of a corrigendum on 16.02.2018. The respondent (collectively referred as 'oil companies') had floated tender for provision of tanker trucks of various categories. Evaluation was to be done on State-wise basis. The specific grievance is that the corrigendum introduced a hitherto absent restriction by way of 15% cap of 21 MT tanker trucks, from each State. The petitioner points out that no such restriction existed in any of the previous like tenders nor did it exist in the original tender issued on 23.01.2018. It is submitted that tender evaluation in such cases is to be done on the basis of the net landed cost – a concept elaborated in the tender documents itself. It is, therefore, urged that the impugned restriction is arbitrary;

besides it is unreasonable.

On the previous date of hearing, this Court had issued notice and required the oil companies to produce the relevant records. The records have now been produced. It is evident that although there was previously no such condition, the discussion in the file as well as the documents on record reveal that over the past few years the bidders had by and large not exceeded 4.5-5% of the overall requirement on a PAN India basis, for 21 MT trucks. The respondents explain that keeping these realities in mind the overall cap of 15% was introduced through the impugned corrigendum to ensure competition and eliminate unhealthy trade practices. It was urged besides that 21 MT vehicles cannot service remote outlets and hilly areas. It is further submitted that even in Haryana from where the petitioner has tendered, the overall bids submitted as on the last date for submission of tenders was only 11% and that in these circumstances the petitioner cannot have a grievance.

Learned counsel for the petitioner submits on instructions that on the strength of the statement made that bids would be considered- since the petitioner's bid fall within the overall 15% range, in respect of the State where it has furnished the bid, as long as they are in fact considered on the merits, no grievance would be pressed. In these circumstances, it is clarified that the oil companies shall proceed to process the petitioner's bid and award the tender, and decide finally on the issue of award of tender subject to other tender conditions such as evaluation of technical and documentary requirements.

As far as the other petitioners are concerned, this Court is of the opinion that the explanation afforded by the oil companies with respect to the impugned restriction cannot be faulted as arbitrary. Three grounds are urged in support - and are broadly borne out by the discussion on the record. The first is that the restriction was imposed having regard to the past trend where on a PAN India basis the overall requirement for 21 MT vehicles was not more than 5%. The second is that not all bottling plants can accommodate 21 MTs and the third is that the cap was imposed in public interest to promote healthy competition and smooth delivery of supplies rather than concentrate in a few hands. These three considerations in the opinion of the Court outlay the interests of a few parties as there is no cap on the number of 21 MT vehicles or any other class vehicles which may be bid for. It is well settled that the formulation of tender conditions, cannot be scrutinized by the Court as if it were examining an ordinary dispute; judicial review parameters would apply only where the process is tainted by illegality, procedural irregularity or malafide. None of these elements in our opinion exist in the present petition. The petition is consequently dismissed as far as the other petitioners (who have not bid from Haryana but from other States). All the pending applications also stand disposed of.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

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