$~21 & 22

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 1505/2019 & CM No.6964/2019**

M/S S. O. GAS PRODUCTS PVT. LTD...... Petitioner

versus

UNION OF INDIA AND ANR. ..... Respondents

\+ **W.P.(C) 1518/2019 & CM No. 7025/2019**

M/S PREMIER LPG PVT. LTD. ..... Petitioner

versus

UNION OF INDIA AND ANR. ..... Respondents

Present : Mr. Piyoosh Kalra, Mr. Syed Hasan Isfahani and Mr. Sunil Kumar, Advs. for petitioners.
Mr. Akshay Makhija, CGSC with Mr. Aditya Goyal and Mr. Seerat Deep Singh, Advs. for R-1/UOI.
Ms. Mala Narayan and Ms. Neha Dawar, Advs. for R-2/IOCL

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **15.02.2019**

1. Issue notice to the respondents.

2. Mr. Akshay Makhija, Central Government Standing Counsel accepts notice on behalf of the respondent no.1. Ms. Mala Narayan, Advocate accepts notice on behalf of respondent no.2/IOCL.

3. Having regard to the nature of the matters, with the consent of counsel for the parties, we have heard these petitions finally.

4. The brief facts of the cases are that the petitioners are bidders in

response to an e-tender, issued by the Indian Oil Corporation Ltd on behalf of the other oil marketing companies. The subject matter of the tender was seeking assistance at 60 different locations from private bottlers having ready built plant and willing to construct a new LPG bottling facility. The petitioners' complaint is that they were not allowed to appear in the interview on the ground of variation between uploaded version of the solvency certificate provided to them by M/s SPL Finance Ltd on 27.09.2018 and the original produced by them. It is contended that this ground is entirely insubstantial and the bids rejection therefore, arbitrary.

5. On behalf of the IOCL, Ms. Mala Narayan, Advocate contended that the solvency certificate issued by the M/s SPL Finance Ltd. – which was uploaded along with tender, was at variance with what was produced by the petitioners' representatives during the course of interview. The counsel underlined that the document uploaded and the document filed, were at variance on 3 aspects : (i) difference in font; (ii) the signatures of different Directors and (iii) the absence of the company's seal in the document produced at the stage of the interview whereas such a seal was noticeable in the document uploaded along with the tender. It is further urged by her that like in the case of the petitioners, the certificates issued to at least around 10 other bidders, by the same financial institution, were at variance with what was produced by the petitioners herein.

6. The petitioners, of course, disputed this and contended that it could not have been in control of the document uploaded since it was issued by a third party and originally transmitted to them digitally. They were given the originals later. It is however, submitted that even if there were some doubts, the oil companies could always seek clarification from the concerned financial institution itself rather than disallowing the petitioners

to join the interview.

7. This court has considered the submissions of counsel for the parties. It is evident that the documents no doubt show variation between what was uploaded by the tenderers/petitioners and what was produced at the stage of the interview. Nevertheless, this in the opinion of this court, is not a substantial variance or a substantial non-compliance with the tender condition and would fall within the category enumerated to be an inconsequential error or ancillary condition of the kind pointed out by the Supreme Court in *Poddar Steel Corporation vs Ganesh Engineering Works, (1991) 3 SCC 273.* In these circumstances, the most appropriate course for the respondents would be to verify whether in fact the certificate issued and the details of the bidder, are as certified by the concerned financer (in this case - M/s SPL Finance Ltd.).

8. The respondents are therefore, directed to adopt this course of verification of the petitioners' particulars and whether in fact the certificate dated 27.09.2018 was issued by M/s SPL Finance Ltd., R-40, South Extension, Part-II, New Delhi-110049 and if so, proceed further with the interview and complete the tender evaluation process.

9. These writ petitions are disposed of in the above terms.

Order *dasti.*

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 15, 2019/aj