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

Date of decision: 05/09/2019

\+ W.P.(C) 3100/2019

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

Through : Mr. Vipul Ganda & Mr. Syed Hassan Isfahani & Mr. Vikas Yadav, Advocates.

versus

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

Through : Ms. Meenakshi Arora, Senior Advocate with Ms.Mala Narayan, Mr.Rahul Narayan, Advocates for IOCL/R2.
Mr. Waize Ali Noor, Mr.Prateek Dhanda, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

JUDGMENT

G.S.SISTANI, J. (ORAL)

This petition is filed under Article 226 of the Constitution of India seeking a writ of mandamus against the respondents to quash decision dated 26.03.2019 of respondent No.2, whereby it is contended that the technical bid of the petitioner was rejected without justifiable reasons, with the sole motive to favour another bidder.

2. Mr. Ganda, learned counsel for the petitioner also submits that respondent No. 2 hurriedly fixed the time for opening of financial bid on 27.03.2019 at 4.10 p.m. within 24 hours of rejection of the petitioner's

technical bid.

3. Some necessary facts which are required to be noticed for disposal of this writ petition are that on 11.07.2018, a notice was issued by respondent No. 2 inviting E-tender for setting-up new LPG Bottling facility at 60 different locations from private bottlers having ready built plant/unit.

4. Accordingly, a common tender for all 60 identified locations was floated. The object was that the successful bidder would be able to create adequate plant/ infrastructural facilities and acquire necessary scale and competence to engage in the activities required for handling of the LPG bottling operations, with caution and safety.

5. The petitioner claims to be a company dealing in LPG products since the year 1983, having vast experience of 35 years in refilling LPG cylinders. The petitioner also claims that they have been running two private bottling plants in Rajasthan for the past 35 years, having sound financial track record to carry-out the job work of refilling LPG cylinders by establishing new bottling plants.

6. The petitioner company participated in the E-tender published by respondent No. 2 for three locations i.e. Mirzapur, Bikaner and Etah and all required documents for the same were duly submitted. 'Letter for willing to extend loan' issued by M/s SPL Finance Limited was also submitted.

7. On point of fact, the locations at Bikaner and Etah are reserved for Micro, Small and Medium Enterprises (MSME) and the petitioner is one such enterprise.

8. On 03.12.2018 a techno-commercial query was raised by respondent No. 2 on its e-portal, which was duly replied to by the petitioner company on 10.12.2018. Petitioner was successful upto Round II; and was

interviewed on 24.01.2019, when all original digital records were also submitted on the e-portal. The petitioner company also asked SPL Finance Limited to hand-over a hard copy of the 'Letter of willingness to extend loan' dated 27.09.2018. Although such letter was not readily available, a replica of such letter was issued by SPL Finance Limited to the petitioner. Although a representative of the petitioner company appeared before the Coordination Committee on 24.01.2019 for an interview and the said Committee scrutinized the documents, it did not allow the representative to participate in the interview.

9. The complaint of the petitioner is that the technical bid of the petitioner has been rejected and the tender has been awarded to one Ranjeev Duggal (hereinafter referred to as 'Duggal') by respondent No. 2, although the said person does not meet the eligibility criteria and also does not fall under the MSME category.

10. Ms. Meenakshi Arora, learned Senior Counsel appearing for respondent No. 2 submits that the technical bid of the petitioner for the site at Bikaner was rejected since there were overhead electrical line/wires existing in the plot of land that was offered.

11. Mr. Ganda in response to this submission has relied upon one of the terms of the tender documents under the Oil Industry Safety Directorate Guidelines which reads as under :

> *"2.1 LOCATION & SAFETY DISTANCES*
> *2.1.1 LOCATION :*
> *While assessing the suitability of any site for location of LPG storage facilities, the following aspects shall be considered :*

> *a) In addition to the requirements for safety the plant should be located in such a manner so as not to be contiguous to any industry having open flame. Property line of the plant shall be away from the central line of the road/railways as per statutory requirements and overhead high tension wire shall not traverse through the battery limit of the plant."*

Relying on the above clause Mr. Ganda submits that the wires in question are not 'overhead high tension wire' or power transmission lines. He relies upon the definition of 'transmission lines' as defined under the Electricity Act, 2003 in support of his contention.

12. Ms. Arora however states that the eligibility criteria of the tender as contained in para 8(iii) of the tender documents specifically stipulates that the plot in question is to be free from overhead power transmission cables/wires, mobile towers or any other type of electrical structure etc. She further submits that in view of the specific tender eligibility criteria, the respondents were well within their right to reject the petitioner's tender with respect to the location at Bikaner.

13. As a second objection to the petitioner's bid, Ms. Arora points-out that there is discrepancy in the khasra number of the offered land as per the PESO approval and as per the registered lease deed as also in relation to the demarcation of the land as per GPS coordinates. In response to this objection, Mr. Ganda submits that there was a typographical error in the PESO Approval Letter and the same has now been corrected.

14. The present writ petition also pertains to sites at Mirzapur and Etah.

15. The objection of respondent No. 2 with respect to the Mirzapur site is

that the land stands mortgaged to a bank. To buttress this argument, learned counsel for respondent No. 2 relies upon the following :

"Part II. For Bidders Willing to Construct. New Bottling Plant at the advertised Location

A. Technical	*(i)*	*Land admeasuring at least 3.0 Acres with either clear title owned by the Bidder AND / OR have registered lease in the name of the bidder, AND/ OR Firm allotment letter from State Govt. or State Govt. body situated in the "Advertised location" and willing to construct LPG Bottling Plant as per OISD-169 guidelines on the offered land at his own cost.*	*a.Self attested Copy of Clear Title deed in the name of bidder/Registered Lease deed for the land upon which the Bottling plant is constructed.*

16. From the khatauni record of the land offered by the petitioner for the said location, it is clear that the land is mortgaged with a bank and therefore the petitioner does not have 'clear title' to the land. With regard to this objection raised by respondent No. 2, Mr. Ganda submits that reading of the clause itself shows that the requirement is of a 'Clear Title deed' in the name of bidder by way of a registered sale deed/registered lease deed. To support his argument, Mr. Ganda relies upon the following part of the bid document:

"Part II. For Bidders Willing to Construct. New Bottling Plant at the advertised Location

Note	*Land area of the Plant shall be at least 3.0 Acres.* *The clear title land shall be owned by the Bidder AND / OR have registered lease in the name of the bidder.* *Any additional land requirements for upgradation of Bottling plant should also be Owned/ Registered leased / firm allotment letter from State of Govt. / State Govt. body.*	*a. Self attested copy of Clear Title deed in the name of bidder/ Registered sale deed/ registered Lease deed for the land upon which the Bottling plant is constructed.* *b...Government land extracts from Revenue Department* *c. Registered Sale Deed/Lease deed & other relevant document to be attached for any additional land required for expansion/up-gradation also.* *d. In case of leased land, the Registered Lease agreement should be valid for a minimum period of 11 years from the last date for submission of tender.* *e. Date of registered sale/lease deed should be on or before the last date for submission of tender.* *f. In case the land is already on long lease*

		and the expiry is within the intervening period of contract, Undertaking as per attached formal duly notarized shall have to be submitted by the bidder as per ANNEXURE-XVIII. Please also refer Note on specific land related Acts/Regulations for which specific deviation can be allowed upon receipt of the copy of such land rules.

16. Mr. Ganda accepts that land is mortgaged but states that the requirement is that the 'title' of the land should be clear; however, the clause nowhere says that there cannot be a mortgage on the land. Thus, according to him, clear title simply means that the land in question should not be under any dispute.

17. Learned counsel has contended that the action of the respondents is *mala fide* and arbitrary, with a view to accommodating particular parties, which are now the successful tenderers/bidders.

18. We had directed respondent to file a reply to the additional affidavit to meet the allegations of *mala fides* and arbitrariness. Ms. Arora has filed a reply to additional affidavit on 26.08.2019, which however is not on record. An additional copy of the same has been handed-up in court, without any objection by the petitioner. The relevant para of the reply to the additional

affidavit filed by respondent is reproduced below :

> *"2. That the Petitioner has also falsely alleged that the Respondent No. 2 Corporation has erroneously rejected the Petitioner's bid for Bikaner location on the ground that there is a variation in Khasra number of offered land as per PESO Approval and registered Lease Deed as there was only typographical error in PESO Approval letter. However, it is submitted that the said allegation is false as the same address as mentioned in the PESO Approval, i.e., 7/2/4 and 1424/2/4 is also mentioned in the Resolution passed by the Board members of the Petitioner company, which is, annexed hereto as ANNEXURE R-5. Hence, it is evident that there was no error made in the PESO approval letter and as such, no infirmity in the decision taken by the Respondent."*

19. Copies of the relevant documents have also been annexed alongwith the reply.

20. We have heard learned counsel for the parties.

21. Learned Senior Counsel for respondent No. 2 has highlighted the fact that the sites in question are required for setting-up LPG Bottling plants. Counsel has drawn our attention to para 3 (b) of the counter affidavit. She submits that to avoid any untoward incident, a clause was included in the tender document to ensure safety at the bottling plants, whereas in the plot of the land offered by the petitioner, there are overhead electrical line/wires, which is not permissible.

22. Although Mr. Ganda has laboured hard and has relied upon certain

annexures to the tender documents to show that the requirement was that there should be no overhead high tension wires traversing through the plot of land offered for the bottling plant, however we are unable to agree with learned counsel, since in our view, the conditions, specifically conditions relating to the safety of the plant and the operations to be carried-on there, must be construed in a manner that is conducive to ensuring such safety rather than to deviate from the same, which may entail high risk and may result in disastrous consequences.

23. Especially considering the nature of the contract, whereby a LPG bottling plant is to be set-up on the land in question, we would give utmost importance to the safety features and requirements which are built into the tender document ; and would be loath to reducing the rigour of such safety requirements.

24. Accordingly, we find no fault in the technical bid of the petitioner having been rejected as far as the site at Bikaner is concerned. Having reached to the conclusion insofar the plot in question is concerned, we do not consider it necessary to delve into the question of typographical errors and other discrepancies which have been cited as variations in the Khasra Nos. and GPS coordinates of the offered land, which though have been explained by the petitioner.

25. As far as the site of Mirzapur is concerned, admittedly the land in question is mortgaged and the owner of the land cannot be said to have a 'clear title'. Although we agree with Mr. Ganda that the clause does not talk about 'mortgaged land' but the explanation rendered by Ms. Arora for including such a clause is cogent and reasonable, namely that the purpose of requiring 'clear title' is that the term of the contract is 11 years and in case

‘title’ is not clear, there may be a likelihood of disruption in the operations of LPG bottling plant at any time.

26. The third site which is subject matter of this petition pertains to Etah. Ms. Meenaksh Arora, learned Senior Counsel for respondent No. 2 submits that the technical bid for the Etah site was rejected as the approach road to the site offered is not freely accessible through an all – weather motorable road and is not suitable for movement of heavy vehicles, bulk LPG Tankers of 18/21 MT payload capacity.

27. The objection raised in relation to the Etah land has fairly not been pressed by Mr. Ganda**.**

28. In view of the above, we find no merit in the writ petition and the same is accordingly dismissed.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 05, 2019
j/uj