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

Date of decision: **17.09.2019**

+ W.P.(C) 3101/2019

M/S PERMIER LPG PVT. LTD.

..... Petitioner

Through: Mr.Vipul Ganda, Mr.Vikas Yadav,
Ms.Dipika Ganda and Mr.Aman
Chaudhary, Advts.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Ms.Meenakshi Arora, Sr.Adv. with
Ms.Mala Naryan, Ms.Neha Dawar,
Mr.Rahul Narayan and Mr.Digvijay,
Advts. for R-2/IOCL.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S.SISTANI, J. (ORAL)

1. This petition has been filed by the petitioner 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 giving justifiable reasons and with the sole motive to favour another bidder.
2. 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/willing to construct new LPG bottling facility.

3. Accordingly, a common tender for all 60 identified locations was floated. The object was that the successful bidder should be able to create adequate plant and infrastructural facilities and possess competence to engage in the activities required for handling of the LPG bottling operations with caution and safety.
4. The petitioner claims to be a company dealing in LPG products since the year 1994, and having vast experience of 25 years in refilling LPG cylinders. The petitioner also claims that it has been running two private bottling plants in Rajasthan for the past 25 years, having sound financial track record to carry-out the work of refilling LPG cylinders by establishing new bottling plants.
5. The petitioner company participated in the E-tender published by respondent No. 2 for three locations i.e. Amroha, Jhansi (U.P.) and Kota (Rajasthan), and all the required documents including digital copy of 'Letter of willingness to extend loan' issued by M/s SPL Finance Limited were also submitted. At the outset it may be recorded that the contract in relation to Amroha was awarded in favour of the petitioner.
6. 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 found eligible for Round II; and was interviewed on 24.01.2019, when all original digital records were submitted on the e-portal. The petitioner company also asked M/s 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 M/s SPL Finance Limited to the petitioner. On 24.01.2019, a representative of

the petitioner company appeared before the Coordination Committee for the interview but the said Committee, after scrutinizing the documents, did not allow the representative to participate in the interview.

7. 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.
8. Mr. Ganda, learned counsel for the petitioner 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. Mr. Ganda further submits that the rejection of the tender by the respondents is baseless, *mala fide*, arbitrary and hyper technical, and with a view to accommodating particular parties, which are now the successful tenderers/bidders.

Site at Kota

9. Mr. Ganda further submits that the ground of rejection of the technical bid of the petitioner in respect of the location at Kota is illegal as there is no overhead high-tension electrical line passing through the plot. The existing overhead electrical line is a low transmission wire, which is not a disqualification as per the wordings of the tender. The tender documents itself speak that there should not be a high-tension electrical wire. He relies upon the definition of 'transmission lines' as defined under the Electricity Act, 2003 in support of his contention. Mr. Ganda also relies upon one of the terms of the tender documents,

under the head of 'Plant Layout', 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."

10. Ms. Meenakshi Arora, learned senior counsel appearing for respondent No.2 submits that the technical bid of the petitioner for the site at Kota was rejected since there are overhead electrical line/wires existing in the plot of land that was offered. Ms. Arora submits that the eligibility criteria as contained in Clause 8 (iii) of the tender documents specifically stipulates that a plot offered has 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 Kota. Clause 8 (iii) is reproduced hereinbelow:

"8. Additional eligibility criteria: Bidders also need to fulfil the set criteria as mentioned in the Tender document in various sections. Any deviation to the set criteria observed at any stage shall lead to rejection of the Bid/Offer at the particular Round in the selection process-

(iii) the Ready Built Plant and/or Offered land should be one contiguous plot, free from live overhead power

transmission cables/wires, mobile towers or any type of electrical structure etc.”

11. Learned counsel for respondent No.2 has drawn the attention of the Court to Clause 8(iii) of the tender document, which is reproduced in the foregoing para as per which there should be no live overhead power transmission cable/wires, mobile towers or any type of electrical structure. The respondents have placed reliance on the inspection report, as per which, at the site in Kota overhead electrical wires of 11 kV are passing through the proposed plot. Ms. Meenakshi Arora has drawn the attention of the Court to the photographs taken by the Committee members which clearly show the passing of the wires over the area in question.
12. At this stage, Mr. Ganda fairly does not press the relief with respect to the site at Kota.

Site at Jhansi

13. Mr. Ganda further submits that the decision of the respondent to reject the tender with respect to the site at Jhansi is based on the ground that out of the 4 land owners of the plot, lease was executed with only 3 owners. Learned counsel submits that the total land at Jhansi is a large plot having four owners and out of which petitioners have offered the piece of land which is in the ownership of three owners. When the query was raised by the industrial team of respondent No.2 regarding the status of the fourth owner, a no-objection certificate of the fourth owner was duly submitted to respondent No.2 vide email dated 15.03.2019. Therefore, rejection of the technical bid of the petitioner for Jhansi was based on flimsy grounds.

14. Ms. Meenakshi Arora further submits that the rejection of the technical bid of the petitioner with respect to the site at Jhansi is on two grounds. The first ground of rejection is that out of the four land owners of the plot, lease is executed with only three owners. Learned senior counsel submits that a comparison of the Lease Deed submitted by the petitioner and a copy of Khatauni for the subject land would show that the lease deed has been executed by three persons namely , Sh. Mahesh, Sh. Bharat Singh and Smt. Ramkuwar whereas the land is owned by four persons, namely Sh. Mahesh, Sh. Bharat Singh, Smt. Ramkuwar and Sh. Jagdish. To buttress this argument, learned counsel for respondent No. 2 relies upon the following part of the tender document:

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

<i>A. Technical</i>	<i>(i)</i>	<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.</i>	<i>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.</i>
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15. Ms. Meenakshi Arora further submits that the second ground of rejection of the technical bid of the petitioner with respect to the site at Jhansi is that the committee members had, during the site inspection, found that the approach road to the plot is only 3 meters wide thereby making it unsuitable for plying heavy vehicles on the site as it can lead to toppling of the bulk carriers used to transport LPG cylinders which may again lead to a disaster as LPG is a highly flammable gas. The Committee members took photographs of the approach road to the proposed plot during site inspection, which clearly show that the width of the approach road is unsuitable for plying heavy vehicles. In response to the submissions made by Mr. Ganda, Ms. Arora has drawn our attention to Clause 8 (ii) of the tender documents as per which the proposed location should be freely accessible through all-weather motorable approach road for smooth movement of heavy vehicle/LPG bulk tankers (18/21 MT payload capacity). Ms. Arora, learned Senior Counsel in the present case submits that the road is only three meters wide. Photographs evidencing the same have been placed on record by the Committee Members during site inspection.
16. We had directed the respondents to file a reply to the additional affidavit to meet the allegations of *mala fides* and arbitrariness. Ms. Arora has filed a reply to the additional affidavit on 26.08.2019, which however is not on record. An additional copy of the same has been handed-over in court, without any objection by the petitioner. The relevant portions of paras 1 and 2 of the reply to the additional affidavit filed by respondent no.2 are reproduced below:

“1. That the allegation of the Petitioner that the Respondent No.2 Corporation has erroneously rejected the Petitioner’s bid for Jhansi location on the ground that the Lease Deed has been executed by three owners whereas the proposed land is owned by four persons despite the Petitioner obtaining a No-Objection Certificate from the fourth co-owner, annexed as Annexure P-9 to the Additional Affidavit. In this regard it is submitted that a bare perusal of the said No-objection Certificate (NOC) shows that it was executed only on 09.03.2019, i.e. much after the closing date on 28.09.2018 and even after the filed inspection carried out on 26.02.2019. Hence, as per the terms of the Tender, the said documents cannot be taken into consideration by the Respondent no.2 Corporation. Further, the NOC not being registered, does not fulfil the legal grounds for consideration even if the same was submitted with the tender. In case, the NOC would have been so considered, the Respondent would then have had to give similar opportunities to the other similarly placed parties also. Also there may have also been similarly placed other parties who may have not even applied as all land owners in their cases may not have agreed to lease their properties and the said parties will also suffer a prejudice.....

2. With respect to the contention of the Petitioner that the Respondent No.2 Corporation has rejected the bid for Jhansi location on a false ground that approach road to site offered is not suitable for smooth movement of heavy vehicles, it is submitted that the Respondent No.2 Corporation has rejected the Petitioner’s bid for Jhansi location as the committee of three officers belonging to all three Oil Companies had, during the physical inspection of the said site, found that the approach road to the offered plot is only approximately three (3) meters wide thereby making it unsuitable for plying of heavy vehicles, i.e. 18/21 MT Tank trucks requiring a bigger turning radius.... In respect of the contention of the Petitioner that the concerned PWD has issued a certificate by the Petitioner

along with their additional Affidavit, which provides that the permanent land of the road is 40 feet, it is submitted that since the PWD has, in the said certificate, nowhere clarified as to whether 40 feet is width or length or height of the said road, the contents of the said certificate are ambiguous and hence, cannot be relied upon. Further, the said certificate is totally silent on the aspect of the approach road being motorable and/or its suitability for plying of bulk carriers of 18/21 MT payload capacity.

.....The committee members took photograph of the approach road to the proposed plot during site inspection, which, clearly goes to show that the width of the approach road is almost three meters and is unsuitable for plying heavy vehicles.”

Copies of the relevant documents have also been annexed along with the reply.

16. We have heard learned counsel for the parties.
17. As far as site at Jhansi is concerned, Mr. Ganda submits that he has now obtained a certificate from the Public Works Department to show that the road in question is 40 feet in width and thus, the objection raised by the respondent that the site offered is not freely accessible through all-weather motorable approach is without any basis. Additionally, Mr. Ganda contends that the ground for rejection that the lease is not signed by the four owners is without any basis as the land in question belongs to only three owners and the fourth person has given his no-objection.
18. Having regard to the fact that the site inspection was carried out by the committee in the presence of the petitioners, the photographs placed on record, we find no infirmity in the stand taken by the respondents. On point of fact therefore, we find no infirmity in the decision rejecting the

technical bids of the petitioner.

19. The law relating to the limited scope of interference of the Court in the decision-making process of an employer in rejecting or accepting the tender is well-settled. The Courts interference is warranted only when the decision of rejection or acceptance of tender is mala fide or inclined towards favoring a particular party. It would be useful to refer to the observations of the Supreme Court in *Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited and Another*, (2016) 16 SCC 818, more particularly paras 11, 15, and 16, which read as under :

“11. Recently, in Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium) [Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106 : (2016) 8 Scale 99] it was held by this Court, relying on a host of decisions that the decision-making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered with. Interference is permissible only if the decision-making process is mala fide or is intended to favour someone. Similarly, the decision should not be interfered with unless the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible authority acting reasonably and in accordance with law could have reached. In other words, the decision-making process or the decision should be perverse and not merely faulty or incorrect or erroneous. No such extreme case was made out by GYT-TPL JV in the High Court or before us.

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15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The

constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.

16. In the present appeals, although there does not appear to be any ambiguity or doubt about the interpretation given by NMRCL to the tender conditions, we are of the view that even if there was such an ambiguity or doubt, the High Court ought to have refrained from giving its own interpretation unless it had come to a clear conclusion that the interpretation given by NMRCL was perverse or mala fide or intended to favour one of the bidders. This was certainly not the case either before the High Court or before this Court.”

20. In view of the above discussion, we are of the view that the writ petition is devoid of any merit. The same is dismissed accordingly.

CM APPL. 14217/2019 (stay)

21. In view of the order passed in the writ petition, the application also stands dismissed.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 17, 2019/rb