

\$~33

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

Date of decision : 15.07.2019

+ W.P.(C) 7517/2019
RAHUL BULK CARRIER

..... Petitioner

Through: Ms. Archana Midha, Mr. K.G. Bhagat,
Advocates

versus

INDIAN OIL CORPORATION LIMITED, MARKETING DIVISION

..... Respondent

Through: Mr. Vikram Mehta, Ms. Rishika Rana,
Mr. Sarthak Khurana, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

%

G.S. SISTANI, J. (ORAL)

1. The petitioner in this writ petition is an LPG Bulk Transporter and belongs to the SC category. The petitioner has been associated with the respondent company since the year 2017 as a LPG Bulk Transporter by road in the northern region. Notice Inviting E-Tenders was issued on 23.01.2018. The petitioner submitted his bid on 13.04.2018. His bid was confirmed by E-mail on 24.04.2018. Petitioner was again informed on 23.11.2018 that his technical bid has been accepted.

2. The petitioner sought a reply from the respondent under the

Right to Information Act with regard to the status of the tender on 30.11.2018. Reply was received on 08.01.2019 informing the petitioner that the tender had yet not been awarded. The petitioner was also informed that the total number of LOIs issued under the SC category were 24 in number. The petitioner learnt on 03.04.2019 that the work orders/LOIs had been awarded under the Tender for the contract year 2018-2023 to other State Registered Tanks Trucks without publishing any list of accepted bidders. The petitioner was kept in the dark about his position. Resultantly, the petitioner issued a legal notice to the respondent on 03.04.2019, which was replied to on 30.04.2019. The petitioner submits that on 12.06.2019, the respondent sent an SMS and E-mail to the petitioner as an afterthought informing the petitioner that his bid has been rejected during the financial evaluation.

3. It is contended that the decision of the respondent is arbitrary, perverse and for extraneous considerations. The petitioner also claims to have held repeated meetings with the Tender Inviting Authority and since no favourable response was received, the petitioner has filed the present writ petition.

4. Learned counsel for the respondent, who enters appearance on advance notice, submits that the present writ petition has been rendered infructuous having regard to the fact that all LOIs have been issued as far back as in the months of November/December 2018. He further submits that the petitioner was informed in reply to the legal notice giving reasons for rejection of financial bid. Additionally an

email and SMS was also sent on 12.06.2019. It is highlighted that even as per the petitioner's own case the contract has been awarded on 3.4.2019. Thus, the petitioner became aware of his rejection in the month of April 2019.

5. We have heard learned counsel for the parties and carefully examined the tender document, which has been placed on record.

6. Although we agree with the submissions made by learned counsel for the respondent that the present petition has been rendered infructuous and even otherwise there is no explanation from the petitioner for the delay in approaching this court, considering that as per the list of dates, the petitioner became aware that a fresh tender for the years 2018-2023 was awarded on 03.04.2019, however, in order to satisfy our conscious with regard to the decision making process by the respondent, we have delved into examining the process by which the decision was taken.

7. The parties are in agreement that this tender pertains to the State of Rajasthan, which is also evident from reading page 35 of the tender document. The LPG Tank Trucks were required for catering at the requirement of the bottling plants under the State of Rajasthan. As per the tender condition, there were three categories of trucks, which could be considered, viz., (i) owned trucks; (ii) attached trucks; and proposed trucks. Owned trucks are those, which are owned by the tenderer and are registered in his name or in the name of the proprietorship firm or the company or the society or the partnership firm, while attached trucks are those, which are not in the name of

the bidders, but can be offered in the ratio of owned: attached = 1:1 ratio and proposed trucks are trucks which may not be available with the bidder as on the closing date of tender but a bidder may give its intent in offering the proposed trucks. All the three categories of trucks have to be necessarily owned by the bidder and registered in the same State for which the tender has been floated.

8. Learned counsel for the respondent states that the Tank Trucks registered with State of Rajasthan were to be given preference over other State Registered Tank Trucks, subject to their bids at floor rates. Learned counsel has placed strong reliance on clause 12 to submit that the State Registered Tank Trucks exhausted the quota for SC in the State of Rajasthan and thus, the petitioner could not be considered for the financial bid. Clause 12 'Evaluation of bidders under SC/ST' is reproduced below:

12. Evaluation of bidders under SC/ST;

- a. As per Govt. guidelines, there is a reservation of 15 % for SC & 7.5 % for ST category. Requirement of trucks for bidders under SC/ST category shall be limited to the aforesaid number as per Govt. guidelines provided such bidders quote at Floor rates/ L1 rates or accept finalized L1 rates.*
- b State Registered TTs would be given preference over other State registered TTs subject to their quoting bids at floor rates. This preferential induction of State registered TTs would however be limited to the requirement of particular State for only those transporters whose bids are received at floor rates,*

- c. *If the no. of Trucks qualified under SC/ST category is less than the reserved number, then all the qualified trucks will be considered for allocation.*
- d. *If the number of Trucks qualified under SC/ST category is more than the reserved number, then allocation of trucks will be as under:*
 - i. ***Bidders quoting at Floor rates;***
 - 1. *All owned and attached trucks registered under same State will be listed separately as per ascending-order of their age.*
 - 2. *All owned trucks, as listed above, will be considered for allocation first as per age, i.e. latest model will be considered first.*
 - 3. *If the requirement is not fulfilled from owned trucks then balance requirement will be fulfilled from attached trucks as per age limiting the ratio of own to attach as 1:1.*
 - 4. *In case of shortfall based on allocation from State specific registered trucks, further allocation will be made to the proposed trucks offered by the respective SC/ST bidders”.*

9. Reading of Clause 12 above makes it clear that the preference had to be given to the tank trucks registered in the State of Rajasthan and also that the quota for the SC Category in the State of Rajasthan was fixed. Once the quota prescribed for the SC Category was exhausted in the State of Rajasthan, the petitioners could not be considered for their financial bid. Thus, we do not find any arbitrariness or infirmity in the actions of the respondents. The law with regard to deciding a matter pertaining to tender is well settled. It

is not the decision, but the decision making process which is to be examined by the Court while exercising judicial review. Having examined the decision making process, we are of the view that the respondents have not committed any illegality in awarding the tender in question. The present writ petition is thus devoid of any merit. There is an additional reason for not entertaining the present writ petition. We are informed that the new contract for the years 2018-2023 has been awarded and the LOIs were issued way back in the month of November and December, 2018 and all the three categories have been filled in accordance with the terms of the tender conditions.

10. There is no merit in the writ petition. The same is accordingly dismissed.

G.S.SISTANI, J

JYOTI SINGH, J

JULY 15, 2019

pkb