

**IN THE HIGH COURT AT CALCUTTA**  
**CIVIL APPELLATE JURISDICTION**  
(Appellate Side)

**MAT 991 of 2021**  
**I.A. No. CAN 1 of 2021**

(Through Video Conference)

Reserved on: 25.11.2021  
Pronounced on: 15.12.2021

K. Tamilarasi and Others

...Appellants

-Vs-

Hindustan Petroleum Corporation Limited and Others

...Respondents

Present:-

Mr. Sirsanya Bandyopadhyay,  
Ms. Deboleena Ghosh,  
Mr. Rahul Kumar Singh,  
Mr. Tapajit Das, Advocates

... for the Appellants

Mr. Kishore Datta,  
Mr. Prasun Mukherjee,  
Mr. Deepak Agarwal, Advocate

... for the Respondent

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,**  
**CHIEF JUSTICE**  
**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,**  
**JUDGE**

**Prakash Shrivastava, CJ:**

1. By this appeal, the writ petitioners have challenged the order of the learned Single Judge dated 09th August, 2021, whereby, WPA 11330 of 2021 has been dismissed.
2. The appellants are the three different bidders who had filed the writ petition before the learned Single Bench with the plea that they had submitted their bids in response to the Notice Inviting Tender (NIT) issued by the respondent No. 1 in March, 2018 for owned Tank Trucks, attached

Trucks, proposed Trucks and additional Trucks for bulk and easy transportation. The petitioners had quoted total seven (07) Tank Trucks (TTs) and they were issued Letter of Acceptance (LOA) by the respondent Hindustan Petroleum Corporation Limited (HPCL) for four (04) tank trucks on 01<sup>st</sup> November, 2018. The petitioners remained aggrieved for non-issuance of the LOA for remaining three trucks, therefore, they had filed the writ petition in July, 2021 with a prayer to direct the official respondent to issue LOA to the petitioners for their remaining trucks. Allegation was made by the petitioner that the LOA to other bidders for lower models were issued. Learned Single Judge after examining the record has dismissed the petition.

3. Learned Counsel for the petitioners submit that the learned Single Judge has committed an error in dismissing the petition on the ground of delay without appreciating that the petitioners had filed the petition after they had come to know that other Tank Truck companies with lower models of TTs were issued the LOA. He further submits that there are several factual errors in the order of the learned Single Judge and placing reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Ramachandra Shankar Deodhar and Others vs. The State of Maharashtra and Others, (1974) 1 SCC 317**, he had submitted that when there is violation of fundamental right, the writ petition could not be dismissed on the ground of delay.

4. Learned Counsel for the respondent has opposed the petition by submitting that there was unexplained delay in filing the petition. Meanwhile, the Earnest Money Deposit (EMD) was returned to the petitioners and that, after a lapse of time, there is no requirement of TTs by the respondent and that the petitioners were given ad hoc induction as per

the preference and the petitioners have not been discriminated as out of their seven trucks, LOA for four trucks was issued.

5. Having heard the learned Counsel for the parties, from the perusal of the record it is noticed that the learned Single Judge is justified in holding that the petitioners had approached the Court belatedly without proper explanation for the delay, and further holding that the petition was hopelessly barred by the principles of delay and laches. Counsel for the petitioner has placed reliance upon paragraph 14 of the writ petition in an attempt to explain the delay but in that paragraph also, the petitioners have failed to disclose the source from which and the manner in which they had come to know about the factum of issuance of LOA to other companies in October, 2019. Such a vague plea cannot give a fresh cause of action to the petitioner. Admittedly, the NIT was issued in the year 2018. On 01<sup>st</sup> November, 2018, out of seven TTs, the LOA for four TTs was issued to the petitioners. Therefore, if the petitioners were aggrieved, they could have approached the Court at that time but they waited till 2021.

6. That apart, it is also worth noting that in the writ petition, an allegation that the LOA to other bidders with lower models were issued but no such material substantiating the same was filed nor the names of other bidders to whom such LOA in irregular manners were issued. The petitioners had prayed for revocation of LOA issued to the other bidders without impleading them as party in the petition and without disclosing the particulars and details of the LOA.

7. Learned Single Judge had also rightly noted the defect of filing combined petition by the three bidders who stand on different footing by noting that their cause of action was distinct and separate. That apart, it is also noticed that subsequently, the EMDs were returned by the HPCL to

the petitioners in the month of May/August, 2019. Therefore, the Counsel for the respondent is justified in raising the plea that the petitioners had waived their right by accepting the EMDs.

8. It has also been pointed out by the learned Counsel for the respondent that when the tender was floated in 2018, there was an estimated requirement of 563 TTs and in course of time, the requirement has been exhausted, therefore, now there is no requirement. Hence, at this stage, the petitioners are not justified in raising the belated grievance. It is not a case of complete denial to the petitioners. Out of seven TTs, they were allotted the LOA of four TTs and they have also been given the benefit of ad hoc induction. The alleged typographical errors in the order of the learned Single Judge have no effect on the conclusion drawn by him. There is no violation of any fundamental right of the petitioner in the facts of the present case, therefore, they are not entitled to the benefit of judgment of the Hon'ble Supreme Court in the case of **Ramachandra Shankar Deodhar and Others (Supra)**.

9. In these circumstances, we are of the opinion that learned Single Judge has not committed any error in dismissing the writ petition. This appeal is found to be devoid of any merit, which is accordingly dismissed.

10. The connected application(s), if any, is also disposed of.

**(PRAKASH SHRIVASTAVA)**  
**CHIEF JUSTICE**

**(RAJARSHI BHARADWAJ)**  
**JUDGE**

Kolkata  
15.12.2021