

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

WPA NO.17970 of 2018

Cima Roadliners & Anr.

-vs-

Hindustan Petroleum Corporation Ltd. & Ors.

For the petitioners : Mr. Kalyan Bandyopadhyay
Mr. Sirsanya Bandyopadhyay
Mr. Arka Kumar Nag

For the HPCL : Mr. Chayan Gupta
Mr. Prasun Mukherjee
Mr. Deepak Agarwal

For the Respondents
No.8 & 9 : Mr. Debabrata Saha Roy
Mr. Neil Basu
Mr. Subhankar Das

Heard on : 22.01.2021, 27.01.2021

Judgment on : 12.03.2021

Ravi Krishan Kapur, J.:

1. The petitioners carry on business as transporters of bulk Liquid Petroleum Gas (LPG). By a notice dated 23 January, 2018 the respondent no.1 Corporation invited bids for hiring of Tank Trucks (TT) for bulk LPG transportation in the State of Bihar.
2. Clause 4 of Section 5 of the tender document provided as follows:

“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”.

3. By a corrigendum, the aforesaid clause was amended to read as follows:

- i. State Registered TTs will be given preference over other State Registered TTs subject to their quoting bids at floor rates.*
- ii. The preferential induction will be limited to the requirement of a particular State.*
- iii. TTs operating in existing contracts, registered outside the Tendered State, submit NOC from Original Registered State, Road Tax from Transferee State, in support of transfer of registration to the tender state then the TTs would be treated as registered in the Tendered State.*

4. Pursuant to the tender the writ petitioner no.1 offered 19 tank trucks 8 of which were part of a subsisting contract and 11 were newly offered. The writ petitioner no.2 offered 19 tank trucks all of which were newly offered tank trucks.

5. The grievance of the petitioners pertains to the refusal of the respondent no.1 Corporation to give preferential treatment to the 11 tank trucks and 19 tank trucks offered by the petitioner nos.1 and 2 respectively notwithstanding the fact that all those trucks had been registered in the State of Bihar. It is alleged by the petitioners that all the aforesaid trucks offered by the petitioners were registered in the State of Bihar and deserved preferential treatment in terms of the tender conditions. It is further submitted that the appropriate

registering authority pertaining to the aforesaid trucks was at Gaya, Bihar and the registration certificates had been issued in favour of all the tank trucks offered by the petitioners.

6. It is further contended on behalf of the petitioners that the actions of the respondent no.1 in not giving preferential treatment to the petitioners amounted to discrimination and was not only in violation of the terms and conditions of the tender but also unfair, unreasonable and capricious. In this context, the petitioners relied on the decision reported in *(2009) 10 SCC 388 Zenit Mataplast Private Limited vs. State of Maharashtra & Others* (at paras 27 and 28).
7. On behalf of the respondent Corporation it is submitted that the bids of the petitioners were rejected insofar as 11 tank trucks of the petitioner no.1 was concerned and 19 tank trucks of the petitioner no.2 was concerned on the ground that the registration numbers of all the concerned vehicles were outside the State of Bihar. In fact, all the aforesaid vehicles had been registered in the State of Nagaland. This fact would also be evident from the documents annexed by the petitioners. Thus, it is contended on behalf of the respondent Corporation that the concerned tank trucks of the petitioners had been rightly rejected. It is also contended on behalf of the respondent Corporation that the vehicles of the petitioners had not been registered in the State of Bihar and as such could not be considered in terms and conditions of the aforesaid tender. It is further submitted on behalf of the respondent Corporation that the evaluation of the

technical bids by the tendering authority could not be called into question by any Court of law and a Writ Court ought not to sit in appeal over the evaluation of the technical bids of the Tendering Committee of the respondent Corporation.

8. By an interim order dated 18 September, 2018 a learned Single Judge of this Hon'ble Court had restrained the respondent from issuing letters pertaining to the 30 tank trucks. This interim order and the status quo has been continuing since September, 2018.
9. Pursuant to directions passed by this Hon'ble Court two separate affidavits have been filed on behalf of the respondent nos.8 and 9 respectively being the registering authority situated at Gaya and the Regional Transport Officer at Patna. On a perusal of the said affidavits it appears that the concerned tank trucks belonging to the petitioner nos.1 and 2 respectively are all registered in the State of Bihar. In the said affidavit filed by the respondent no.8, it is alleged that the tank trucks of the petitioner no.1 are registered in the State of Bihar. In this connection, the relevant documents have also been annexed to the respective affidavits by the concerned respondents. In the affidavit-in-opposition filed by on behalf of the respondent no.9 it is recorded that the 21 tank trucks offered by the petitioner no.2 were all registered in the State of Bihar. Significantly, notwithstanding service of such affidavits, the respondent no.1 Corporation was unable to contradict or controvert the aforesaid facts alleged on behalf of the respondent nos.8 and 9.

10. I have considered the submissions made on behalf of the parties.

11. The only reason for rejecting the tank trucks offered by the petitioners was that there appeared to be a controversy whether the tank trucks furnished by the petitioners had been registered in the State of Bihar or not. On a plain reading of the aforesaid tender conditions, I am of the view that preferential treatment has to be given by the respondent no.1 Corporation to the tank trucks which were registered in the State of Bihar. This fact was not disputed by any of the parties. I am of the view that, in the light of the affidavits of the respondent nos.8 and 9, there is no scope for any dispute as to whether the tank trucks offered by the petitioners were registered in the State of Bihar or not. It is categorically averred by the respondent nos.8 and 9 that all the concerned tank trucks had been registered in the State of Bihar. Accordingly, I find that there can be no controversy on this aspect of the matter at all. Hence, I am of the view that the rejection by the respondent no.1 Corporation of the petitioners bid on the ground that their tank trucks had not been registered in the State of Bihar is unfair, unreasonable, irrational discriminatory and arbitrary.

12. For the foregoing reasons, the writ petition is allowed. The respondent no.1 Corporation is forthwith directed to issue appropriate directions insofar as the 30 (11 + 19) remaining tank trucks offered by the petitioner nos.1 and 2 respectively. The respondent no.1

Corporation is also directed to act in terms of the aforesaid tender conditions and give preferential treatment to the tank trucks offered by the petitioners and issue appropriate letters forthwith in favour of the petitioner nos.1 and 2 respectively.

13. WPA 17970 of 2018 stands allowed to the aforesaid extent and is accordingly disposed off. A certified photocopy of this judgment, if applied for, be given to the parties upon compliance with all necessary formalities.

(Ravi Krishan Kapur, J.)