AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2342 of 2021

M/s Navin Kumar Chopda Through its Proprietor Navin Kumar Chopda, Aged About 45 Years, Transport Contractor, having its Office at FCI Road, Tarbahar Fatak , Bilaspur Chhattisgarh.

---- Petitioner

Versus

1. Hindustan Petroleum Corporation Limited (HPCL) A Government of India Enterprises , Through Its Director Having Its Registered Office At Petroleum House 17, Jamshedji Tata Road, Mumbai 400020
2. Hindustan Petroleum Corporation Limited (Hpcl) Through Senior Category Manager CPO (MKTG) 9th Floor, Marathon Futurex Building, A Wing Mafatlal Mills Compound, N.M. Joshi Marg, Mumbai 400013.
3. Union of India Through Secretary, Ministry of Petroleum and Natural Gas, Shashtri Bhawan, New Delhi.

---- Respondents

(Cause-title taken from Case Information System)

For Petitioner	:	Mr. Vivek Chopda, Advocate
For Respondents 1 & 2	:	Mr. Ali Asgar, Advocate
For Respondent No.3	:	Mr. Ramakant Mishra, Assistant Solicitor General

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Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri N. K. Chandravanshi, Judge

Order on Board

Per Arup Kumar Goswami, Chief Justice

16.12.2021

Heard Mr. Vivek Chopda, learned counsel for the petitioner. Also heard Mr. Ali Asgar, learned counsel appearing for respondent Nos. 1 & 2 and Mr. Ramakant Mishra, learned Assistant Solicitor General appearing for respondent No.3.

2. By filing this writ petition, the petitioner challenges the order dated 07.04.2021 passed by the DGM-Raipur IRD & Duly Constituted Attorney of Hindustan Petroleum Corporation Limited (for short, HPCL) rejecting the representation dated 30.03.2021 filed by the petitioner, which was submitted pursuant to the judgment dated 25.03.2021 passed by this Court in WPC No. 3162/2018 and batch.

3. The respondent No.2 had issued a Notice Inviting Tender (for short, 'NIT') bearing tender No. 18000140-HD-10157 for transportation of bulk POL Products : MS/HD Branded fuels by road, Ex-Raipur Depot on 04.06.2018. For transportation of said fuel, the estimated Tank Truck (TT) requirement for first three years and the 4th & 5th year was divided in two parts. The same is set-out in table below :

Sr. No.	Description	While Oils	
		1st to 3rd Year	4th & 5th Year
1.	Tank Trucks With capacity of 12 KL & above and less than 18 KL	19	10
2.	Tank Trucks with capacity of 18 KL & above	201	60

4. About 400 vehicles were offered by 44 qualified bidders including the petitioner in the category of 18 KL & above and the bidders were to quote the minimum and maximum rates within the price band as mentioned in the NIT. Most of the participants, including the petitioner, quoted the rock-bottom rate of Rs.2.23 per k.m. in respect of TT capacity of 18 KL and above and as such, all of them came to be placed as L1 bidders. As more trucks were offered than the demand, it was to be

guided by a sub-ranking based on merit, as provided in the NIT. The criteria/guideline as indicated in the Price Evaluation of the tenders is as follows :

> "9. In case, at a particular ranking, Tank Trucks offered are more than the requirement, then the tenderers in that particular ranking shall be further ranked based on the following order of priority and allocation shall be made only till the full requirement of Tank Trucks is met:
>
> 1. Number of Tank trucks offered of higher capacity (18 KL & above)
> 2. Number of Owned Tank trucks offered by the tenderer
> 3. Number of Tank trucks offered of Lower Age
> 4. Number of Tank trucks (Total) offered by the tenderer.
>
> Tenderers beyond the ranking where the projected requirement is met shall be considered for allocation."

5. At this juncture, it will be appropriate to extract the chart at paragraph 19 of the judgment dated 25.03.2021 for better appreciation.

S. No.	Bidder	Cat	Tank truck details					Rank	Sub Rank	Remark	Tts to be allotted
			12 KL	18KL	Total	Own	Age				
1	Ishika Transport	MSE	2	26	28	28	5.13	L1	L1	Set of L1	20

2	Satya Ventrues	General	0	26	26	22	3.85	L1	L2	bidders	20
3	Indu Transport	MSE	0	24	24	22	4.91	L1	L3		20
4	RP Roadways	General	0	22	22	22	2.40	L1	L4		20
5	Maa Sharada Road Carriers	MSE	0	17	17	11	4.69	L1	L5		17
6	Balaji Bulk Movers	MSE	0	15	15	14	6.82	L1	L6		15
7	Shri Ram Logistic	General	0	15	15	12	6.70	L1	L7		15
8	Chhattisgarh Andhara Pradesh Lines	General	0	14	14	13	1.37	L1	L8		14
9	Decent Transport	General	0	12	12	11	0.59	L1	L9		12
10	Kk Roadways	General	5	12	17	10	8.11	L1	L10		12
11	Umashankar Shukla	MSE	0	12	12	10	10.48	L1	L11		12
12	Avadhesh Transport	General	0	11	11	11	4.42	L1	L12		8
13	Vijay Roadlines	General	0	11	11	10	2.46	L1	L13		
14	Navin Kumar Chopda	MSE	0	10	10	10	1.74	L1	L14		
15	Krishna Road LinEs	General	1	9	10	10	1.74	L1	L15		
16	KBharat Roadlines	MSE	0	7	7	6	2.60	L1	L16		
17	Gurmeet Singh	MSE	0	7	7	4	7.14	L1	L17		
18	Rohti Transport Services	General	0	6	6	6	3.07	L1	L18		
19	Raj Wardhan Singh	MSE.ST	0	6	6	6	N/A	L1	L19		6

20	Vikram Auto Center	MSE	0	6	6	5	3.85	L1	L20		
21	Indian Roadlines	MSE	0	6	6	5	4.45	L1	L21		
22	Ganesh Movers And Logistics Pvt. Ltd.	MSE	0	6	6	5	6.30	L1	L22		
23	Ashish Soni	MSE	0	6	6	3	5.06	L1	L23		
24	Patel Ksk Tankers Transport	MSE	0	5	5	5	0.06	L1	L24		
25	Kishori Sao Transport	General	0	5	5	5	0.41	L1	L25		
26	Om Ksk Tankers Transport	MSE	0	5	5	5	0.56	L1	L26		
27	GN Corporation	MSE	0	5	5	5	0.56	L1	L27		
28	HH Transport	MSE	0	5	5	5	0.56	L1	L28		
29	Abhishek Enterprises	General	0	5	5	5	0.56	L1	L29		
30	Chhattisgarh Tanker Services	General	0	5	5	5	0.56	L1	L30		
31	Amit Soni	MSE	0	5	5	5	1.89	L1	L31		
32	Aurora Transport	ST	0	5	5	5	7.32	L1	L32		5
33	Bholenath Transport	MSE	0	5	5	4	2.05	L1	L33		
34	Shyam Brothers and Co.	MSE	0	5	5	4	2.21	L1	L34		
35	Sangam Fuels	General	0	5	5	3	1.19	L1	L35		
36	Ayyappa Oil Carrier	General	0	5	5	3	3.16	L1	L36		
37	J.B. Bulk Carriers	General	0	5	5	3	5.02	L1	L37		

38	RK Roadlines	General	0	5	5	2	2.78	L1	L38		
39	Deepak Roadways	MSE	0	5	5	2	2.81	L1	L39		
40	Ganesh Dhruv	MSE-ST	0	3	3	3	10.10	L1	L40		3
41	Anand Transport Corporation	MSE-St	2	2	4	4	11.15	L1	L41		2
42	Shri Ram Minerals	General	3	2	5	3	3.58	L1	L42		
43	Chandan Transport	General	3	2	5	3	3.68	L1	L43		
44	Maa Mahamaya Trasport	MSE	0	7	7	7	2.92	L44	L44		

6. A perusal of the said chart would go to show that 201 vehicles needed by the respondent Nos. 1 & 2 could be allotted up to Sl.No.12, excluding 16 TTs for reserved category. The petitioner's name figured at Sl.No.14 and he was ranked as L14, which is sub-set of L1 based on the criteria fixed, which is noted above.

7. It will be also noticed that though Sl.Nos. 1 to 4 in the chart had offered in 28, 22, 22 and 22 TTs, respectively, maximum number of vehicles that can be awarded to an individual tenderer is 20 and therefore, they were offered only 20 TTs each.

8. The petitioner had challenged the NIT and the procedure adopted in WPC No. 3162/2018, alleging that the same is in contradiction to the eligible quota earmarked for Micro & Small Enterprises like the petitioner.

9. The challenge with regard to the aforesaid aspect of the matter was negated by this Court.

10. The name of one Balaji Bulk Movers appeared at Sl.No.6 of the chart, who had offered 15 TTs. However, subsequently, for suppression of material facts and for committing fraud in the tender proceedings, the respondent Nos. 1 & 2 canceled the agreement entered into with Balaji Bulk Movers and accordingly, rejected his offered 15 TTs. This aspect of the matter was also taken note of by the Division Bench while passing the order dated 25.03.2021 and had accordingly, make certain directions with regard to how the aforesaid 15 TTs are to be allotted. Division Bench in WPC No. 3162 of 2018 at paragraphs 27, 28 & 29 recorded as follows :

> "27. The 7th Respondent has not turned up to file any counter affidavit, despite completion of service of notice and is not contesting the matter. Since all the '15' vehicles offered by the 7th Respondent (who is from MSE segment and placed at Sl.No.6) have been rejected, this extent of vehicles may require to be substituted by identifying the eligible bidder standing next in the queue. Since the Respondent-HPCL has made a work study as to the extent of requirement of the Tank Trucks (after taking stock of the 178 Trucks offered by the Dealers), which is stated to be '201' in the 18 KL and above category and since, the 7th Respondent placed at Sl.No. 6 of Annexure-R-1/5 has been excluded after cancelling the agreement, it is for the Respondent-HPCL to fill up the slots by taking further steps for issuing the LOAs to the eligible bidder/ s. Since the vehicles offered by the bidders upto and

including Sl.No.12 have been accepted and the work has been awarded, the eligibility of the next eligible bidder/s in line, to replace the slot occupied earlier by the 7th Respondent at Sl.No.6 of Annexure-R-1/5 requires to be considered immediately; as the tender is for a period of 'five years' from 01.10.2018 to 30.09.2023 and 2½ years are still remaining. If the verification exercise in respect of the 7th Respondent had been promptly effected by the Respondent-HPCL on time, the grievance of the Petitioner/s could have redressed much earlier.

28. Incidentally, it is to be noted that the necessary work study has already been completed by the Respondent-HPCL with regard to the number of Trucks to be included in the Tender after ascertaining the number of vehicles available with the Dealers by calling for 'expression of interest'. It was after giving credit to a total of about '178' vehicles under this head, that the remaining extent (for which the tender was to be floated) was fixed as '220' (**'19'** in the lower segment of 12 to 18 KL and **'201'** in the higher segment of 18 KL and above). Even according to the Respondent-HPCL, '398' vehicles were offered by the 44 qualified bidders. The number of vehicles offered and the number of vehicles accepted are given in tabulated form extracted already. From this table, the total number of vehicles

offered by all the 44 bidders comes to '398', whereas the total number of vehicles accepted in the reserved/ST and MSE / General category is 201 (16 + 185 respectively). Since the 7th Respondent placed at Sl.No.6, who had offered '15' vehicles (shown as accepted) stands already removed from the slot, the total figure will still come down to 186 (16+170). The total 'requirement' of the vehicles and the total vehicles 'accepted' in respect of which LOA has been issued to the bidders concerned, do not reconcile with each other. In other words, distribution of the total requirement of '201' vehicles in the relevant segment of '18 KL and above' is not reflected from the table given by the Respondent-HPCL, which is also a matter that requires to be considered by the Respondent-HPCL.

29. In the light of the discussion made above, we hold that there is no merit in the writ petition as to the alleged violation of the Clause 6(2) of Annexure-P/4 Procurement Policy Order or the relevant terms and conditions of the Annexure-P/2 Tender *w.r.t.* the claim for sharing of work on 'proportionate basis' among the different MSEs at L1 level. However, in view of the challenge already raised against the eligibility and qualification of the 7th Respondent, who has already been blacklisted, terminating the agreement and rejecting all the '15' vehicles offered by him, the

Respondent-HPCL is directed to consider the matter for filling up the vacated slot at Sl.No. 6 because of the ouster of the 7th Respondent for issuance of 'LOA' to the eligible bidder / bidders next in the queue, based on their merit; along with the point discussed in the previous paragraph. The said exercise shall be done as expeditiously as possible, at any rate, with a period 'two weeks' from the date of receipt of a copy of this judgment."

11. While rejecting the representation filed by the petitioner pursuant to the above direction contained in order dated 25.03.2021, it was noted by the DGM-Raipur IRD & Duly Constituted Attorney of HPCL as follows :

> "9. NIIT clause 15.e (page 55 of 129) for additional tank truck induction is produced below.
>
> **//Quote**
>
> … However, ranking as per the original quoted rates shall be maintained in line with the prevailing purchase procedures for meeting any additional requirement of tank trucks. **Unquote**
>
> 10. In the NIIT, nowhere it is mentioned that bidders from outside the set of L1 will be inducted.
>
> 11. The intention of the NIIT in their clause no. '15.e' is that after the final selections, no other bidders are to be allowed and that in case there is shortfall of Tank Trucks, then the same should be fulfilled by existing

> set of L1 bidders only.
>
> Under the facts and circumstances stated above, we wish to submit that the Terms and conditions of the Public e-tender do not permit HPCL for induction of tank truck from outside the set of L1 bidders during the pendency of the current Transportation Contract Agreement executed between the parties.
>
> Hence, your representation dated 30.03.2021 requesting for issuance of LOA is hereby rejected."

12. Mr. Chopda submits that clause 15.e, on which reliance was placed while rejecting the representation relates to additional TTs, which is not the case in hand inasmuch as the question of re-allotting the 15 TTs had arisen because of cancellation of the TTs allotted to Balaji Bulk Movers and therefore, in terms of the specific directions of this Court that the queue has to be followed, the respondent authorities were required to allot TTs to those who are L1 and who are placed below the sub-set of L12 *i.e.*, starting from L13 downwards. It is, accordingly, submitted that the very decision making process in rejecting the representation is vitiated.

13. Mr. Ali Asgar, learned counsel appearing for respondent Nos. 1 & 2, on the other hand, submits that the arguments advanced by the learned counsel for the petitioner is without any merit inasmuch as, as noted in the order dated 07.04.2021, in the NIT, nowhere it is mentioned that bidders from outside the set of L1 could be inducted. He has also produced before the Court an inter-office memo dated 25.07.2018 to

submit that shortfall arising out of Industrial Transport Disciplinary Guidelines (ITDG), such as, disqualification of Balaji Bulk Movers would also be treated as additional shortfall and therefore, clause 15.e is squarely effected. He places reliance in paragraphs 38 and 44 of the decision of the Hon'ble Supreme Court in the case of ***Caretel Infotech Ltd. v. Hindustan petroleum Corporation Limited***, reported in ***2019 SCC OnLine SC 494***.

14. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

15. At the outset, it would be relevant to take note of clause 15.e of the NIT, which reads as follows :

> 15.e) Tenderers would be intimated by Regd Post / Telegram / UCP / E-mail / Fax on the date and time fixed for negotiations. All the bidders to whom intimations are sent shall participate in the negotiation process. In the even of L-1 bidder not attending the negotiations, despite advance intimation, HPC will proceed with the negotiation process with other tenderers in the set of L1 tenderers. The original L-1 tenderer would be placed at the revised ranking based on the negotiated rates arrived after negotiations with other tenderers. <u>However, ranking as per the original quoted rates shall be maintained in line with the prevailing purchase procedures for meeting any additional requirement of tank trucks</u>." (emphasis supplied by us).

16. A perusal of the above would go to show that only the underlined portion of clause 15.e is relevant. The order of this Court dated 25.03.2021 passed in WPC No. 3162 of 2018 and batch is already noticed. At the cost of repetition, what needs to be emphasized is that this Court specifically directed that because of vacated slot at Sl.No.6 arising out of ouster of Balaji Bulk Movers, the respondent-HPCL was to consider the eligible bidder / bidders next in the queue, based on their merit. In absence of any challenge to the order dated 25.03.2021 passed by this Court in WPC No.3162 of 2018, the order had attained finality. It is evident from the order dated 07.04.2021 passed by the DGM-Raipur IRD & Duly Constituted Attorney of HPCL that the direction of this Court was not even adverted to and was glossed over and to that extent, there is total non-application of mind in passing the order.

17. That the petitioner is an L1 bidder is not in dispute. What is sought to be argued by Mr. Ali Asgar and what also seems to be the rationale behind passing of the order by the DGM-Raipur IRD & Duly Constituted Attorney of HPCL is that should there be any further requirement of TTs, the same have to be allotted within the sub-set of L1 bidders, who were initially given allotment and not to any other, though otherwise L1. When this Court had directed allotment to eligible bidder / bidders next in the queue, that too on the basis of merit, it was incumbent on the part of the authorities to have gone beyond who were initially granted TTs *i.e.*, beyond sub-set of L12.

17. Even if there is any prevailing practice or procedure which requires grant of further allotment to only the original allottees under clause 15.e,

such prevailing practice cannot be pressed into service and in view of the order of this Court requiring the respondents to go beyond the L12 sub-set, the case of the petitioner ought to have been considered. The inter-office memo dated 25.07.2018 shows that the shortage quantity is to be offered first to the set of L1 parties as approved by ECM/MCC. As noted earlier, the petitioner is also an L1 party.

18. Mr. Chopda has submitted that if Vijay Roadlines at Sl.No. 13 and the petitioner at Sl.No.14 were considered, after allotting the requisite number of vehicles to Vijay Roadlines at Sl.No. 13, the petitioner would have been entitled to allotment of one TT. We do not express any opinion on the same and it is for the respondents to work out the same.

19. In the ***Caretel Infotech Ltd.*** (supra), the Hon'ble Supreme Court had observed that an unnecessary, close scrutiny of minute details, contrary to the view of the tendering authority, makes awarding of contracts by Government and Public Sectors a cumbersome exercise, with long drawn out litigation at the threshold and therefore, the Courts should not give their own interpretation to contracts, more specifically tender terms, at the behest of a third party competing for the tender. In the instant case, this Court is seized of the interpretation to be given to the order dated 25.03.2021 passed by this Court in WPC No. 3162 of 2018 and batch and therefore, the decision cited has no application.

20. Considering the matter in its entirety, the order dated 07.04.2021 passed by the DGM-Raipur IRD & Duly Constituted Attorney of HPCL is set aside and matter is remanded back to the DGM-Raipur IRD & Duly Constituted Attorney of HPCL for passing appropriate orders in the light

of the observations made in this order within a period of 15 days from today.

20. The writ petition is allowed, as indicated above. No cost.

Sd/-	Sd/-
(Arup Kumar Goswami)	**(N.K. Chandravanshi)**
Chief Justice	**Judge**

Chandra