

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 18.03.2021

Judgment Delivered on : 25.03.2021

WPC No. 3162 of 2018

- M/s Navin Kumar Chopda, through its Proprietor - Navin Kumar Chopda, aged about 43 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. M/s Maa Sharda Road Carriers, 29/121 Gali No. 06, Phase - I, Shriram Nagar, Raipur Chhattisgarh.
4. M/s Ishika Transport, Kurud - Road Kohka, P.O. Supela, District Durg Chhattisgarh. 490023.
5. M/s Uma Shankar Shukla 39, Vardhaman Colony, Rajiv Gandhi Ward, Jagdalpur Chhattisgarh. 494009
6. M/s Indu Transport, Indu Udyan Chowk, Jarhabhata, Bilaspur Chhattisgarh.
7. M/s Balaji Bulk Movers, F.C. I. Road Tarbahar, Bilaspur Chhattisgarh.
8. M/s C.G. Andhra Road Lines Jr. Mig - 46-A, Vaishali Nagar, Bhilai - District Durg Chhattisgarh.
9. M/s Satya Ventures, Santi Para, Bus Stand, Bhilai - 3, District Durg Chhattisgarh 490021.
10. M/s Anand Transport Corporation, House No. C-179, Bajaj Colony - 2, New Rajendra Nagar, Raipur Chhattisgarh 492006.
11. M/s Rajwardhan Singh Shop No. 113, Kuber Plaza, Magarpara Road, Bilaspur Chhattisgarh.
12. M/s Ganesh Dhruv Shop No. 21, Taha Complex, Bharitya Nagar Chowk, Vyapar Vihar Road, Bilaspur Chhattisgarh.

---- Respondents

WPC No. 310 of 2019

- M/s Ayappa Oil Carriers, through its Proprietor J. Ramesh Kumar, aged about 41 years, having its Office at Ward Q. No. L. B. 17, Padum Nagar, Charoda, Bhilai-3, District Durg, 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)-9 Th Floor, Marathon Futurex Building, A Wing Mafatlal Mills Compound, N. M. Joshi Marg, Mumbai 400013.
3. The Petroleum And Explosives Safety Organization (Peso) Through The Controller Of Explosives, Raipur, Avanti Vihar Colony Main Road, Post Shankar Nagar, Raipur, Chhattisgarh.
4. The Regional Transport Officer Regional Transport Authority Bilaspur, Lagra, Seepat Road Bilaspur, Chhattisgarh.
5. M/s Ishika Transport Kurud Road Kohka, P. O. Supela, District Durg, Chhattisgarh. 490023.
6. M/s Balaji Bulk Movers F. C. I. Road Tarbahar Bilaspur, Chhattisgarh.
7. M/s Chhattisgarh Andhra Road Lines Jr. MIG- 46-A, Vaishali Nagar Bhilai- District Durg, Chhattisgarh.
8. M/s Satya Ventures Santi Para, Bus Stand, Bhilai-3, District Durg, Chhattisgarh. 490021
9. M/s Anand Transport Corporation House No. C-179, Bajaj Colony- 2, New Rajendra Nagar, Raipur, Chhattisgarh. 492006.
10. M/s Rajwardhan Singh Shop No. 113, Kuber Plaza, Magarpara Road, Bilaspur, Chhattisgarh.
11. M/s Ganesh Dhruv Shop No. 21, Taha Complex- Bharitya Nagar Chowk, Vyapar Vihar Road, Bilaspur, Chhattisgarh.

---- Respondents

WPC No. 313 of 2019

- M/s Rohit Transport Service Through Its Proprietor Lalji Gupta, Aged About 45 Years. Having Its Office At Ward No. 21, Near Hanuman Mandir Pragati Nagar, Camp-1, Bhilai, District Durg, Chhattisgarh.

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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. The Petroleum And Explosive Safety Organization (Peso) Through The Controller Of Explosives, Raipur, Avanti Vihar Colony Main Road, Post Shankar Nagar, Raipur, Chhattisgarh.
4. The Regional Transport Officer Regional Transport Authority Bilaspur, Lagra, Seepat Road Bilaspur, Chhattisgarh.
5. M/s Ishika Transport Kurud Road Kohka, P. O. Supela, District Durg, Chhattisgarh. 490023.
6. M/s Balaji Bulk Movers F. C. I. Road Tarbahar, Bilaspur, Chhattisgarh.
7. M/s Chhattisgarh Andhra Road Lines Jr. MIG- 46-A, Vaishali Nagar Bhilai- District Durg, Chhattisgarh.

8. M/s Satya Ventures Santi Para, Bus Stand, Bhilai-3, District Durg, Chhattisgarh. 490021
9. M/s Anand Transport Corporation House No. C-179, Bajaj Colony- 2, New Rajendra Nagar, Raipur, Chhattisgarh. 492006.
10. M/s Rajwardhan Singh Shop No. 113, Kuber Plaza, Magarpara Road, Bilaspur, Chhattisgarh.
11. M/s Ganesh Dhruv Shop No. 21, Taha Complex- Bharitya Nagar Chowk, Vyapar Vihar Road, Bilaspur, Chhattisgarh.

---- Respondents

WPC No. 340 of 2019

- M/s Sangam Fuels Through Its Proprietor- Vinod Kumar Upadhyay, Aged About 55 Years, Having Its Office At Plot No.5, Vivekanand Colony, Ward- 11, Supela Bhilai, 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.
2. Hindustan Petroleum Corporation Limited (HPCL) Through Senior Category Manager- CPO (MKTG)-9th Floor, Marathaon Futurex Building, A- Wing, Mafatlal Mills Compound, N.M. Joshi Marg, Mumbai., District : Mumbai, Maharashtra
3. The Petroleum And Explosives Safety Organization (PESO) Through The Controller Colony, Main Road, Post Shankar Nagar, Raipur, Chhattisgarh.
4. The Regional Transport Officer Regional Transport Authority Bilaspur, Lagra, Seepat Road, Bilaspur, Chhattisgarh.
5. M/s Ishika Transport Kurud-Road- Kohka, P.O. Supela, District- Durg, Chhattisgarh.
6. M/s Balaji Bulk Movers F.C.I. Road Tarbahar, Bilaspur, Chhattisgarh.
7. M/s C.G. Andhra Road Lines Jr. MIG- 46-A, Vaishali Nagar, Bhilai- District- Durg, Chhattisgarh.
8. M/s Satya Ventures Santi Para, Bus Stand, Bhilai-3 District- Durg, Chhattisgarh.
9. M/s. Anand Transport Corporation House No.- C-179, Bajaj Colony-2, New Rajendra Nagar, Raipur, Chhattisgarh.
10. M/s Rajwardhan Singh Shop No. 113, Kuber Plaza, Magarpara Road, Bilaspur, Chhattisgarh.
11. M/s Ganesh Dhruv Shop No. 21, Taha Complex, Bharitya Nagar Chowk Vyapar Vihar Road, Bilaspur, Chhattisgarh.

---- Respondents

WPC No. 366 of 2019

- M/s Kishori Sao Transport, through its Proprietor Kishori Sao ,having its Office at Sirsa Road Contractor Colony Bhilai District Durg 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, Jamshed Ji, Tata Road Mumbai 400020
2. Hindustan Petroleum Corporation Limited (HPCL) Through Senior Category Manager CPO (MKTG) 9th Floor, Marathan Future Building A Wing Mafatlal Mills Compuond N.M.Joshi Marg Mumbai 400013
3. The Petroleum And Explosives Sagfety Organizatiomn (Peso) Through The Contorller Of Explosives, Raipur Avanti Vihar Colony, Main Road Post Shankar Nagar Raipur Chhattisgarh.
4. The Regional Transport Officer Regional Transport Authority Bilaspur, Lagra, Seepat Raod, Bilaspur Chhattisgarh.
5. M/s Balaji Bulk Moves FCI Road Tarbahar Bilaspur Chhattisgarh.
6. M/s Anand Trnasport Corporation House No. C-179, Bajaj Colony 2, New Rajendra Nagar Raipur Chhattisgarh 492006
7. M/s Rajwardhan Singh Shop No. 113, Kuber Plaza, Magarpara Road Bilspur Chhattisgarh.
8. M/s Ganesh Dhruv Shop No. 21, Taha Complex, Bhartiya Nagar Chaowk Vyapar Vihar Raod Bilaspur Chhattisgarh.

---- Respondents

For Petitioners	: Mr. Vivek Chopda, Advocate
For Respondents/State	: Mr. Vikram Sharma, Deputy Government Advocate
For Respondent/HPCL	: Mr. Ali Asgar and Mr. Utkarsh Rai, Advocates
For Respondents No. 4 & 9	: Mr Anurag Jha, Advocate
For Respondent No.5	: Mr. Kashif Shakeel, Advocate
For Respondent No.6.	: Mr. Hari Agrawal, Advocate
For Respondent No. 8.	: Mr. Anand Dadariya, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Per P. R. Ramachandra Menon, Chief Justice

1. The alleged arbitrary action on the part of the Respondent-HPCL in finalizing the tender for transportation of petroleum products contrary to the Annexure-P/4 – the Public Procurement Policy for Micro and Small Enterprises (MSEs) Order 2012 (hereinafter referred to as 'Procurement Policy Order') issued by the Central Government and deviating from Annexure-P/2 Tender Conditions with regard to the eligible quota earmarked to the MSEs (Micro & Small Enterprises) like the Petitioners

and in awarding the same to the persons of choice like the private Respondents herein, who are not even qualified under various heads, on a pick and choose basis, is the subject matter of challenge in these writ petitions.

2. WPC No. 3162 of 2018 is taken as the lead case and the parties & proceedings are referred to as given therein except where it is separately mentioned, depending on the context.
3. Mr. Vivek Chopda, the learned counsel addressed the Court on behalf of the Petitioners. The submission on behalf of the Respondent-HPCL was made by Mr. Ali Asgar, the learned counsel. We heard Mr. Vikram Sharma, who is the learned counsel for the State as well as the learned counsel appearing for the party-Respondents concerned, who have entered appearance.
4. At the very outset, it is relevant to note that, invoking the power under Section 11 of the Micro, Small & Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the Act, 2006'), the Central Government has notified Annexure-P/4 Procurement Policy Order 2012, bringing it into force *w.e.f.* 01.04.2012. As per the relevant Clauses in the Annexure-P/4 Procurement Policy Order, 20% of the goods / work / services have to be earmarked to the MSE segment; of which 20% is for 'SC/ST MSEs' as defined by the Ministry in the Procurement Policy Order itself. This is with an intent to promote the 'Micro and Small' segment industries to an appropriate extent and as such, the Respondent-HPCL is also bound by the same. It was accordingly that, Annexure-P/2 NIT was

issued inviting bids from the qualified parties for effecting transportation of petroleum products as mentioned in the Notification, also referring to the preference available to the MSE's segment as given in Annexure-P/4 Procurement Policy Order.

5. The Petitioner is a proprietorship firm engaged in the business of transportation of petroleum products and is a registered Micro and Small Enterprise under the Act, 2006 as discernible from Annexure-P/1. The Petitioner is owner of 10 Tank Trucks with carrying capacity of 18 KL (Kilo Litres) and above. Being qualified in all respects, the Petitioner submitted the bid online, quoting @ Rs.131 per KM for free delivery zone and Rs.2.23/KL/KM for beyond free delivery zone. All the relevant documents were furnished online as stipulated in the tender, besides submitting the hard copies of the relevant documents in the relevant covers stipulated in this regard.
6. In fact, as disclosed from the materials brought on record, the estimated Tank Truck requirement was assessed by the Respondent-HPCL and it was to be for a period of 'five years' from 01.10.2018 to 30.09.2023. The Tank Trucks required were of two different categories i.e. of 12 KL & above (but below 18 KL) and the other one of 18 KL & above. The requirement of the vehicles in the 1st category in respect of first three years was '19', whereas it was '201' in the 2nd category. The last date for submission of bid was fixed as 06.07.2018; which came to be extended till 23.07.2018 by a Corrigendum Notification. The tender was opened on 23.07.2018 and the bids received were evaluated, whereby the Petitioner got placed at Sl.No.14, on the basis of merit.

7. It is pointed out that the Petitioner, along with several other bidders, though got placed at L1 level by the Respondent-HPCL, Letter of Allotment (LOA) was not issued to him, despite having preference under the MSE category. The Respondent-HPCL allotted 'LOA' only to such other MSEs of their choice; which is stated as highly arbitrary and objectionable. It is also the case of the Petitioner that by virtue of Clause 3, read with Clause 2 of the Annexure-P/4 Procurement Policy Order and the relevant stipulation in the Annexure-P2 Tender Notification, if more than one MSEs were available in the L1 sector, work had to be given on a proportionate basis, which provision has been virtually ignored while identifying only some MSEs of choice of the Respondent-HPCL for allotment of work. This is stated as highly arbitrary / discriminatory and violative of the rights in all respects.
8. It is further pointed out that there were serious defects / lapses on the part of the private Respondents with reference to the eligibility, qualifications and submission of the tender which have been given a 'go-bye' while giving placement in the select list for granting LOA. As per the tender conditions, it is clearly stipulated that nobody can participate in the bid with 'open body' trucks, whereas the 7th Respondent participated in the bid with '07' open body trucks among the total of '15', stated as owned by them. That apart, as per the terms of the tender, it was obligatory for the participant to have possessed and uploaded the documents as insisted; such as, Registration Certificate, Calibration Certificate and also the 'PESO' Licence. It is contended that the 7th Respondent was not having valid PESO Licence as required under the Tender Notification, as on the

last date for submission of the bid. Undue favour was extended by the Respondent-HPCL to the 7th Respondent to procure and produce the PESO Licence after the last date and it was accordingly, that the said Respondent was accommodated at Sl.No. 6 of the merit List; that too, permitting to bid with 'open body' trucks, contrary to the stipulations in the Tender Notification. It is further pointed out that despite the clear terms in the Tender Notification, insisting the necessity to have only "top loading" trucks, some of the party-Respondents were having only 'bottom loading' trucks; which have been accepted by the Respondent-HPCL. This is another instance of flouting the terms of the tender to extend undue benefits to the bidders of choice of the said Respondent-HPCL. Since objections preferred before the 1st and 2nd Respondents did not yield positive result, the Petitioner has moved this Court by filing the writ petition challenging the entire tender process and the LOA issued in favour of Respondents No. 3 to 12; simultaneously, seeking to direct the Respondents No. 1 and 2 to adhere to Annexure-P/4 Procurement Policy Order and award LOA to the Petitioner; being eligible in all respects in the MSE category. There is also a prayer to direct the Respondent authorities to take appropriate action against the erring officials.

9. A return has been filed from the part of Respondents No.1 and 2, pointing out that the tender proceedings have been finalized strictly in conformity with the terms and conditions of the tender as notified in the Annexure-P2 and that there is no violation of Annexure-P/4 Procurement Policy Order, in any manner. It is further submitted that the eligible extent of allotment has been given to the qualified MSE bidders on the basis of their merit

and appropriate extent of reservation has been provided to SC / ST segment of MSE bidders as well, giving effect to the Annexure-P/4 Procurement Policy Order. Details of evaluation of bidders who participated in the process and their placements at appropriate level have been given in Annexure-R-1/5 produced along with return. On filing rejoinder from the part of the Petitioner, an additional affidavit dated 23.06.2019 has been filed by the Respondent-HPCL. It is stated that, as mentioned in the reply filed by the Respondent-HPCL, the induction of the Tank Trucks has been done only after physical scrutiny of the Tank Trucks and the relevant documents. In the course of such induction process, it was found that the 7th Respondent had submitted incorrect documents with regard to '07' Tank Trucks, out of the '15' Tank Trucks offered by them. In the said circumstance, the agreement executed with the said transporter was terminated and was blacklisted as per Annexure-R-1/6 proceeding dated 13.04.2019.

10. The Respondent-HPCL has further stated that the interpretation sought to be given to the Annexure-P/4 Procurement Policy Order by the Petitioner is not correct and that the HPCL has provided 20% reservation to MSE bidders. In place of 41 Tank Trucks, total number of 69 Tank Trucks have been allotted to MSE bidders (General Category) as they rank high in sub-ranking method, which is much more than the required 20% quota. It is brought to the notice of this Court that the object of the Act, 2006 and Annexure-P/4 Procurement Policy Order promoting the MSE bidders is by providing participation to an extent of 20% within the price band of "L1+15%"; simultaneously stipulating that when the MSEs already get

placement / selection upto the requisite extent, on their merit (while competing with others), the provisions of Clauses 6(1) and 6(2) of Annexure-P/4 Procurement Policy Order will not be applicable.

11. Private Respondents No. 6 and 8 have filed their return to the extent they are involved. The Respondent-HPCL has produced some additional documents vide Annexures-R-1/7 and R-1/8 along with I.A. No. 5/2021 dated 24.02.2021 to explain the scope of the preference provided to the MSE segment in the Annexure-P/4 Procurement Policy Order.
12. The learned counsel for the parties on both the sides addressed the Court with reference to the pleadings and materials brought on record in support of their contentions.
13. After hearing both the sides, we find that the dispute is mainly of 'three' folds :
 - Firstly, with regard to the alleged violation of the Annexure-P/4 Procurement Policy Order and Annexure-P/2 tender conditions in this regard;
 - Secondly, with regard alleged arbitrary action taken by the Respondent-HPCL accepting the bid of the 7th Respondent (who is placed at Sl.No.6 in the evaluation chart) despite the fact that they had no PESO Licence on the last date of submission of the bid and no such documents were uploaded. Further they had committed 'fraud' in participating the bid suppressing the material facts as to actual nature of 07 Tank Trucks offered, which were "open body"

Trucks as against the requirement and stipulation in the tender that open body Trucks cannot be offered; which however came to be accepted and the work has been awarded to them as well;

- Thirdly, that the Respondent-HPCL has accepted the 'bottom loading' Tank Trucks, contrary to the clear stipulation in the tender conditions that Tank Trucks shall be of 'top loading' type alone.

14. With regard to the first question, as mentioned already, the Government of India has taken a policy decision to promote the Micro, Small and Medium segment Enterprises and various measures have been stipulated in this regard in the Act, 2006. In exercise of power under Section 11 of the Act, 2006, Annexure-P/4 Procurement Policy Order has been issued, wherein mandatory procurement from Micro and Small Enterprises has been clearly provided under Clause 3; which is to the following effect :

“3. Mandatory procurement from Micro Small and Enterprises. - (1) Every Central Ministry or Department or Public Sector Undertaking shall set an annual goal of procurement from Micro and Small Enterprises from the financial year 2012-2013 and onwards, with the objective of achieving an overall procurement of minimum of 20 percent, of total annual purchases of products produced and services rendered by Micro and Small Enterprises in a period of three years.

(2) Annual goal of procurement also include subcontracts to Micro and Small Enterprises by large enterprises and consortia of Micro and Small Enterprises formed by National Small Industries Corporation.

(3) After a period of three years i.e. from 1st April 2015, overall procurement goal of minimum of 20 percent shall be made mandatory.

(4) The Central Ministries, Departments and Public Sector Undertakings which fail to meet the annual goal shall substantiate with reasons to the Review Committee headed by Secretary (Micro, Small and Medium Enterprises), constituted in Ministry of Micro, Small and Medium Enterprises, under this Policy.”

After the period of three years mentioned under sub-clause (1) therein, it has been stated in sub-clause (3) that from 1st April, 2015, overall procurement goal of minimum of 20 per cent shall be made mandatory.

15. The price quotation in tenders has been given in Clause 6, which is to the following effect :

“6. Price quotation in tenders. % (1) In tender, participating Micro and Small Enterprises quoting price within price band of L1+15 per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in situation where L1 price is from someone other than a Micro and Small Enterprise and such Micro and small Enterprise shall be allowed to supply up to 20 per cent of total tendered value.

(2) In case of more than one such Micro and Small Enterprises, the supply shall be shared proportionately (to tendered quantity).”

16. Submission made by Mr. Vivek Chopda, the learned counsel for the Petitioner is that, by virtue of the mandatory requirement to provide 20% of the work / services to the MSE segment and insofar as the Petitioner has been placed at L1 level, having quoted the rock bottom rate shown in the price band providing for the 'minimum and maximum rate' (beyond which nobody can quote) and further since more than one MSEs at the same (L1) level are available, the work / allotment shall be shared proportionately (tender quantity) among the different MSEs in that level

by virtue of sub-clause (2) to Clause 6. Since Respondent-HPCL has included only some MSEs to be given the work, excluding the Petitioner who is also an L1 MSE bidder, there is patent violation of the Annexure-P/4 Procurement Policy Order and the relevant provisions in the Annexure-P/2 Tender Notification as well.

17. Mr. Ali Asgar, the learned counsel appearing for the Respondent-HPCL submits that the idea and understanding of the Petitioner as to the scope of the above provision is not correct. With regard to the factual position, it is pointed out by the learned counsel that the HPCL, before issuing the Tender Notification, had invited 'expression of interest' to assess the number of Tank Trucks to be procured for carrying out the transportation of petroleum products. About '178' vehicles were offered by the Dealers and it was taking note of the said figure, that the balance number of Tank Trucks was fixed as '220', among which '19' vehicles were to be in the 12 KL and above (but below 18 KL category), while the remaining '201' were to be in the 18 KL and above category (to which the Petitioner belongs). In fact, there were 45 participants, among whom one was rejected and 44 remained in the field as the eligible bidders. There is no challenge with regard to the Trucks in the first category *i.e.* '12 KL and above' (but below 18 KL) category and the dispute projected in the writ petition is only in respect of the other category *i.e.* '18 KL and above'.
18. About 400 vehicles were offered by the 44 qualified bidders in the above segment. The bidders were to quote the 'minimum and maximum' rates within the price band as mentioned in the Tender Notification. Most of the participants, including the Petitioners herein, quoted the rock bottom

rate of 2.23 per k.m. (below which nobody was entitled to quote), whereby they came to be placed at L1 level. By virtue of the terms of the Tender, when there was more supply than the demand, it was to be guided by sub-classification, based on the merit, as provided in the Tender Notification with reference to the criteria, which was applied, as noted below :

“Tank Truck Capacity 18 KL & above (Table 2)

Since more number of truck than requirement is available for 18KL & above, the sub-ranking clauses were applied as follows:

- 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.”

19. Based on the assessment as above, the merits of the various participants (44 bidders) were evaluated and it has been given in a tabulated form, in Anneuxre-R-1/5, which is extracted below for convenience of reference :

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 bidders	20
2	Satya Ventrues	General	0	26	26	22	3.85	L1	L2		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	General	0	14	14	13	1.37	L1	L8		14

	Andhara Pradesh Lines										
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		

There is no challenge from the part of the Petitioner with regard to the 'eligibility or assessment criteria' or as to the evaluation of the relevant rates and the placement given to the Petitioner at Sl.No.14. The only question is whether the Respondent-HPCL has honoured the commitment in Annexure-P/4 Procurement Policy Order and the stipulation in Annexure-P/2 Tender Conditions, in providing minimum 20% work to the MSE segment.

20. Coming to the scope of Clause 6 (1) of the Annexure-P/4 Procurement Policy Order, under the Scheme of the Tender, it is possible that the MSEs may not get a placement at L1 because of the probable higher rate quoted by them in view of their overhead expenses and such other aspects. But, in view of the Policy of the Central Government and the

object to promote the MSE segment under the Act, 2006 and also Annexure-P/4 Procurement Policy Order framed in exercise of power under Section 11 of the Act, 2006, MSEs have to be accommodated to an extent of 20% in the manner as specified therein. It is with the object of promoting the MSEs, that the Government has stipulated that even if the MSE has quoted a higher rate than L1, they have to be considered to the appropriate extent; provided their rate is not beyond 15% than L1. Under such circumstance, the MSEs within the considerable zone of “L1 rate + 15%” have to be given an opportunity to get the relevant extent of share in the work / service; provided they agree to supply the goods / render the work / service at the rate quoted by the party at L1 level. This is quite evident from the wording given under Clause 6 (1), which refers to the context “in situation where L1 price is from someone other than a Micro and Small Enterprise”. There may be chances to have more than one such MSE within the range of “L1 + 15%”, having quoted different rates of their own. Under such circumstance, the benefit of 20% earmarked for the MSE segment has to be equitably distributed among 'such MSEs' (i.e. within L1+15% slot), sharing it proportionately as given in sub-clause (2) of Clause 6.

21. It is contended by the Petitioners that all the MSEs at L1 level, who have quoted the same figure at rock bottom rate, are to be treated alike and that giving the benefit only to a few, without sharing the work proportionately, will go against the mandate of Clause 6 (2). The said proposition is difficult to be accepted for the obvious reason that Annexure-P/4 Procurement Policy Order does not say that, whenever

more than one MSE participate in the bid proceedings, coming within the reckonable unit of L1 or L1+15%, the work shall be equally shared among them. The very intent of sub-clause (1) of Clause 6 is to bring an 'MSE' who has quoted a higher rate than L1 to the level of L1 for awarding the work to the requisite extent (20%); for ensuring that such extent of work should go to the MSE sector. This by itself shows that, if the price quoted at L1 is by an MSE, consideration of any other MSE from the segment of "L1+15%" may not be necessary; unless there is a vacant slot or deficit to meet the requirement of 20% allocable to the MSE segment.

22. It is brought to the notice of this Court from the part of the HPCL that the scope of the above provision has been correctly understood and it has been applied by various other Entities belonging to the Government sector, as done by the Mazagon Dock Shipbuilders Limited (a Government of India undertaking) vide Annexure-R-1/7, where it has been mentioned that the preference shall not be applicable where the MSE firm is an L1 firm. The relevant Clause is extracted below for easy reference :

"A231. MDL has right to place order on MSE-Manufacturers meeting following criteria :
In tenders, if participating MSEs quoted prices are within price band of L1+15%, such MSEs shall also be allowed to supply a portion up to 20% of requirement by bringing down their prices to L1 price where L1 is non MSEs. If more than 1 MSEs fall under such criteria then this 20% shall be distributed proportionally. This preference shall not be applicable where MSE firm is L1 firm.
% out of 20 percent target of annual procurement from Micro and Small Enterprises, a subtarget of

20 percent (i.e 4 percent out of 20 percent) shall be earmarked for procurement from Micro and Small Enterprises owned by the Scheduled Caste or the Scheduled Tribe Entrepreneurs. In respect of items reserved for MSE-Manufacturers, extant guidelines shall be followed. Presently Circular No. S.O. 581(E) dated 23.02.2012 is applicable. MSEs involved in trading activity are not eligible to avail benefits of PPP for MSEs.”

23. Similarly, in the case of tender floated by the Indian Oil Corporation Limited, the relevant clause in this regard is Clause (B-2) of the relevant document produced; which is reproduced below :

“(B-2) The above provision will be subject to MSEs quoting price within price band (L-1+15%); i.e. L1 plus 15% and bringing down their price to L-1 is a situation where the L-1 price is from someone other than an MSEs. In case of more than one such MSEs, the supply shall be shared proportionately from the MSEs party. In case the L-1 tenderer is MSE party, then the ranking as detailed in tender shall prevail and NOT proportionately shared among tenderers within L1+15%.”

24. The matter has been further clarified from the Office of the Development Commissioner (Micro, Small & Medium Enterprises), Ministry of Micro, Small & Medium Enterprises, Government of India, vide Annexure-R-1/8 dated 24.10.2016, with reference to the frequently asked questions and answers given. The question No. 8 and its answer are relevant which are reproduced below :

“Q.No.8 : Whether there is price match making facility for procurement from MSEs over large scale ?

Ans. In tender, participating MSEs quoting price within band of L1+15% shall also be allowed to

supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than an MSE. Such MSEs shall be allowed to supply atleast 20% of total tendered value. In case of more than one such MSE, the supply will be shared proportionately (to be tendered quantity)."

It is pointed out by the HPCL that, as answered against question No. 13, there is a separate 'grievance redressal mechanism', in case of non-compliance of the Policy by any Government Department and hence that the writ petition is not liable to be entertained, in view of the alternate remedy available.

25. With regard to the factual aspects, it is brought on record that the total requirement of 18 KL and above category Tank Trucks, as assessed by the Respondent-HPCL, was '201'. To give effect to the Policy of the Government as per the Act, 2006 and Annexure-P/4 Procurement Policy Order, read with Annexure-P/2 Tender Conditions, the maximum benefit to be given to promote the MSE segment (by providing work / service) is only to an extent of 20%. Going by the eligibility of the successful bidders as finalized by the Respondent-HPCL and allotment effected by them, the bidders at Sl.Nos. 1, 3, 5, 6 and 11 (of the tabulated chart extracted already) in the MSE segment at L1 level, have been given the LOA to an extent of 20, 20, 17, 15 and 12 Tank Trucks, whereas the Petitioner, who has not been given allotment, is the next L-1 bidder in the MSE segment, having got placed at Sl.No.14. Annexure-R-1/5 also reveals that the Respondent-HPCL has accepted the allotment of 6+5+3+2 (total 16) Tank Trucks from the bidders at Sl.No.19, 32, 40 and 41, who are in the

'MSE-ST' segment (reservation segment). This being the position, the submission made from the part of the Respondent-HPCL that adequate reservation to an extent of 20%, as envisaged under Annexure-P/4 Procurement Policy Order, has been given effect to, is liable to be sustained. The contention of the Petitioners to the contrary, that there is violation of Clause 6(2) of Annexure-P/4 Procurement Policy Order and that the work has to be shared among all the L1 MSEs proportionately stands repelled. This is more so, since the placement of other L-1 MSEs on the top of the Petitioners in Annexure-R-1/5, is based on their better eligibility and credentials. The work given to them very much satisfies the 20% requirement of work to be allotted to MSEs.

26. However, things have taken a different turn after filing the writ petition, particularly, in the light of the serious objections raised by the Petitioner against the credentials of the 7th Respondent, who participated in the bid infringing the specific terms of the Tender. As mentioned already, the Petitioner has a specific case that the 7th Respondent had participated in the Tender with 'open body' Tank Trucks, which is contrary to the stipulation in Annexure-P/2 Tender conditions, that such vehicles would not be accepted. In fact, the 7th Respondent had offered '15' vehicles and obtained placement above the Petitioner at SI.No.6 in the merit list. The documents produced by the 7th Respondent in respect '07' vehicles were of the prohibited class, as certified by the Authorities of the Motor Vehicles Department of the State Government, which forms part of Annexure-P/7. Taking note of the serious objections, only '08' vehicles were initially accepted by the Respondent-HPCL (as pointed out by the

learned counsel) and enquiry was made with regard to the remaining '07' vehicles, when it was got confirmed from the Authorities of the Motor Vehicles Department that the said '07' vehicles were only of 'open body' type and hence found not acceptable. In the said circumstance, stern action was taken against the 7th Respondent for suppressing the material facts and for committing 'fraud' in the tender proceedings; whereby the agreement executed was cancelled, rejecting all the '15' vehicles. This is discernible from Annexure-R-1/6 dated 13.04.2019. As it stands so, the contention of the Petitioner as to the lack of qualification of the 7th Respondent stands vindicated.

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 SI.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.
30. The writ petition stands disposed of as above.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge