

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2928 OF 2021**

Omsai Enterprises

...Petitioner

Versus

Indian Oil Corporation & Anr

...Respondents

Dr Abhinav Chandrachud, *with Prasad Sarvankar, i/b Chaitanya Nikte, for the Petitioner.*

Mr Chirag Modi, *with Ashok Purohit, i/b Ashok Purohit & Co, for Respondent No.1.*

Mr Ajinkya Badar, *for Respondent No.2.*

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**

DATED: 17th November 2021

PC:-

1. Rule. Respondents waive service. By consent, Rule is made returnable forthwith and the matter is taken up for hearing and final disposal.

2. Leave to amend forthwith and without need of reverification to include an averment that the Petitioner has by its emails of 13th January 2021 and 15th January 2021 demanded justice but justice has been denied. This will be included as paragraph 33A of the Petition.

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3. We have heard Dr Chandrachud for the Petitioner and Mr Modi for the 1st Respondent, Indian Oil Corporation Limited (“IOCL”). With their assistance we have considered the Affidavits and material on record.

4. The Writ Petition under Article 226 of the Constitution of India seeks our intervention against the rejection by the IOCL of the Petitioner as one of the successful technically and otherwise qualified tenderers for road transportation for bulk petroleum products under tender No. WRCC/2020-21/PT/47.

5. The second prayer is for a Mandamus directing IOCL to issue an appropriate letter of allotment or letter of intent and an appropriate work order to the Petitioner for the subject tender.

6. The IOCL issued a notice inviting tenders from tank truck owners for the award of contracts for road transportation for bulk petroleum products for the location of Solapur TL, Village Pakhani, Solapur, Maharashtra. The notice was issued on 12th August 2020. The requirement was of trucks of 12–16 kilolitres and 18–40 kilolitres capacity. 37 trucks of each quantity were required. The Petitioner put in a tender and offered six tank trucks in the desired ratio. The Petitioner sent in its documents. The Petitioner was declared technically qualified and IOCL accepted the Petitioners’ technical bid by its tender summary report dated 3rd January 2021. Then there was a reverse auction, a process that is guaranteed to ensure that everybody is at L-1 level and no higher. The Petitioner was allowed to participate.

7. On 5th January 2021, the IOCL through its online site published the details of Lot No.1. The Petitioner was shown as being at the L-1 level.

8. The Petitioner then learnt that other tenderers had received letters of allotment but the Petitioners had not. After some time, the Petitioner sent two communications by email on 13th and 15th January 2021 to IOCL asking for a reason for the Petitioner's exclusion.

9. These reasons are now set out in the Affidavit in Reply. Before we turn to those reasons, we note that Clause 1.12 of the tender document says that the offer must be complete in all respects before the closing of the tender.

10. The Affidavit in Reply says that the Petitioner was not qualified, although the Petitioner was shown as L-1. The reason given is in the MSME certificate produced by the Petitioner. According to IOCL, the Petitioner's bid was rejected for failure to produce a MSME certificate for rendering transport service. It is contended that the Petitioner's certificate did not conform to the necessary requirements. The registration certificate produced by the Petitioner at the time of the tender, like all other tenderers, had three parts. These are shown under NIC 2 Digit Code, NIC 4 Digit Code and NIC 5 Digit Code. There is no difficulty so far as the NIC 2 and NIC 4 Digits Codes are concerned. They are described respectively as '52-warehousing and support activity for transportation' and '5221-support activity incidental to land

transportation'. The third column is the NIC 5 Digit Code described as 52219. In the Petitioner's original submission, this was given as '52294 weighing of goods'. This is what IOCL says renders the Petitioner ineligible and disqualified. But Dr Chandrachud points out that IOCL never sought a clarification from the Petitioner as to whether Petitioner also has a certificate under the required 52219 NIC 5 Digit Code. Had it asked, the Petitioner would have undoubtedly supplied it because the Petitioner, like other successful tenderers, did in fact have such a certificate. It is shown at page 88. In fact, the Petitioner was shown technically qualified and IOCL raised a techno-commercial query on the Petitioner (page 86) to which the Petitioner replied at Page 87 obviously giving the registration number of five trucks.

11. We are of the view that the Petitioner could not have been disqualified by IOCL on this basis particularly when it is shown that the Petitioner did hold even prior to the tender the necessary relevant certificate. As Dr Chandrachud points out, it is not as if the Petitioner has obtained the necessary certificate after the tender was closed. IOCL has given such transportation letters of intent or allotment to a very large number of transporters such as the Petitioner. We see no justifiable reason for the Petitioner to be excluded.

12. Accordingly, we make the Petition absolute in terms of prayer clause (c) at the price fixed for all L-1 bidders.

13. There will be no order as to cost.

14. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)