

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 71 of 2022
with
CAN 1 of 2022
with
MAT 76 of 2022
with
CAN 1 of 2022

(Through Video Conference)

Reserved on : 10.02.2022
Pronounced on: 08.03.2022

Indian Oil Corporation Limited & Ors.

...Appellants

-Vs-

Ganesh Movers and Logistics (P) Ltd. & Anr.

...Respondents

&

Indian Oil Corporation Limited & Ors.

...Appellants

-Vs-

M/s. Ajay Pal Singh

...Respondents

Present:-

Ms. Madhavi Divan, ASG,
Mr. Amit Kumar Nag,
Ms. Priya Puri,
Ms. Ranjabati Ray,
Mr. Abhishek Nag,
Mr. Ayush Puri,
Mr. Vishesh Kalra,
Mr. Kartikeya Jha, Advocates

... for the Appellants

Mr. Kishore Datta, Sr. Adv.
 Mr. Sirsanya Bandopadhyay,
 Mr. Soham Kumar Roy,
 Mr. Tapajit Das, Advocates

..... for the Respondent No. 1 in MAT 71 of 2022

Mr. Aashutosh Bhattacharyya,
 Mr. Sattwik Bhattacharya, Advocates

..... for the Respondent No. 2 in MAT 71 of 2022

Mr. Jishnu Chowdhury,
 Mr. Ratnesh Kr. Rai,
 Mr. Ankan Rai,
 Ms. Vipula Garg,
 Ms. Kirti Dhadeech,
 Mr. Sachchida Nand Pandey, Advocates

..... for the Respondents in MAT 76 of 2022

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

Rajarshi Bharadwaj, J:

1. By this appeal, correctness of the order of the learned Single judge dated 18.01.2022 passed in W.P.A. No. 19365 of 2021 (Ganesh Movers and Logistics (P) Ltd. -versus- Indian Oil Corporation Limited & Ors.) has been questioned by the appellant. This appeal is concerned with the order of the said learned Single Judge relating to the validity of the rejection of a Tender to the respondent/writ petitioner by the appellant/respondent that invited bids for road transportation of bulk petroleum products.

2. The facts of the case are that the appellant herein, the principal respondent in the writ petition by a notice of tender in the month of May-June 2021 invited bids for transportation of bulk petroleum products. In the said bid the writ petitioners took part and certain preconditions were set down in order to successfully submit their bids. One of such pre-requisites was the submission of valid registration certificate from the concerned RTO in support

of the Tank Trucks offered. In September, 2021 the appellant sent varied techno-commercial queries and sought clarification from the respondent/petitioner, inter-alia, asking for documents such as No Objection Certificate for Tank Trucks, PESO certificate and a Board Resolution. All the documents were furnished by the petitioner.

3. The writ petitioner was informed via e-mail on the 2nd of November, 2021 that their technical bid was accepted by the Tender Evaluation committee and they stood at serial no.15 in the tender summary report published on the 4th of November, 2021. By a further intimation dated 9th of November, 2021 they were asked to take part in the financial part of the bid i.e., reverse auction for the Jharsuguda terminal.

4. The petitioner/respondent duly participated in the reverse auction on 12th November, 2021 and anticipated for the appellant to revert. However, on 19th November, 2021 the petitioner/respondent discovered that letters of acceptance had already been sent to several transporters. While ascertaining its status, by a communication dated 22nd November, 2021 the petitioner/respondent was informed that their tender was rejected during the financial evaluation due to invalid RC book, 2 Tank Trucks got disqualified vie PQC. Since, there were bidders with a greater number of Tank Trucks compared to the writ petitioner; No Tank Trucks were allocated to the writ petitioner.

5. According to the learned Senior Advocate appearing for respondent/writ petitioner, the rejection of the petitioners bid is unfair, arbitrary, illegal and tainted with mala fides. Of the 15 TTs offered by the writ petitioner, two new vehicles had a Permanent Registration No's. OD15T0149 and OD15T0297 issued by the RTO, Sambalpur, Odisha.

6. The Smart Cards being the formal registration document with electronic data, were not received at the time bids were submitted and was only available on the 14th and 17th August, 2021 respectively. Firstly, it was argued that the tender along with the Registration certificate constituted the requisite compliance of the pre-qualification conditions (PQC) of the NIT. Therefore, the contention that Registration Certificate/RC book of the two TTs were not furnished along with the tender, was not justified on part of the appellants herein.

7. The respondent/writ petitioner's technical bid was already accepted by the appellant on the 2nd November, 2021. The respondent/writ petitioner was allowed to participate in the financial bid only thereafter. Thus, it was arbitrary and illegal to reject respondent/writ petitioner's technical bid from the LOT-1 category after technically disqualifying 2 TTs.

8. As per the terms of Section 41(6) of the Motor Vehicles Act, 1988 the two tank trucks disqualified by the IOC had valid registration. Hence, it was unfair, arbitrary and contrary to law to disqualify the said Tank Trucks for alleged absence of Smart Card. After approving the respondent/writ petitioner's technical bid and allowing him to participate in the financial bid of the tender process, the rejection of his bid is for collateral purpose aimed at depriving the respondent/writ petitioner of the benefits of LOT-I thereby allowing other tenderers to gain unlawfully. Thus, it is argued that, the actions of the Indian Oil Corporation are bad for waiver, acquiesce and estoppel.

9. It was contended by the learned Senior Advocate appearing for the Indian Oil Corporation that since the two TTs did not have a Smart Card, to entitle the vehicle to ply on the roads, the certificate produced by the appellant/petitioner was invalid and that the certificate would only be valid upon production of Smart Card therewith. It was also argued that the IOC reserved its right to examine and reject any bid even after the technical qualification and/or even in the course of evaluation of the financial part of the bid.

10. It was submitted that the employer shall have the exclusive discretion to decide on the fulfilment or otherwise of technical qualifications in a tendering process. Where two views are possible, a writ court should not impose its own view on the employer thus, the rejection of the respondent/writ petitioner's bid by the IOC shall not be interfered with.

11. This appeal is also concerned with the correctness of the same order of the learned Single judge dated 18.01.2022 passed in W.P.A. No. 19842 of 2021 (M/s. Ajay Pal Singh-versus-Indian Oil Corporation Limited & Ors.) which was filed in respect of the same NIT with similar facts. With the only difference being that the technical queries addressed to the writ petitioner/respondent herein were that the partnership deed of petitioner/respondent dated 3rd December, 2014 is not registered. It was communicated to the petitioner / respondent that he was also technically

disqualified, after he furnished the documents. All 15 TTs of the petitioner/respondent were disqualified after participating in the financial bid for not satisfying the PQC. Since no smart card was produced, the registration document was deemed insufficient as well.

12. The learned Counsel appearing for the petitioner/respondent Ajay Pal Singh in MAT No. 76 of 2022 adopted the submission of the learned Senior Advocate in MAT No. 71 of 2022 and argued that it was ridiculous to disqualify his client for absence of Smart Card along with tender since the 15 TTs quoted in his clients tender was already in use for the IOC after verification of all documents. Since the appellants herein did not ask for copies of the Smart Card despite being entitled to do the same, the presumption is that IOC was satisfied with the registration documents supplied by the client along with his bid. Thus, it was argued that IOCL is estopped from asking for the said Smart Card, not having asked for the same in the technical evaluation. Therefore, it was irrational for the respondents/appellants herein to reject his clients bid for absence of Smart Card.

13. The learned Single Judge upon having carefully considered the rival contentions and the arguments of the counsel for respective parties held that the IOC required submission of the documents only showing a valid RTO registration. The registration certificates produced by the respondent/petitioner constituted sufficient compliance of Section 41 of the Motor Vehicles Act, 1988. The rejection of the respondent/writ petitioner's bid for alleged non-production of registration Smart Card was illegal, arbitrary and not sustainable in law.

14. The date and registration number of the Smart Card was the same as the date and registration of the certificate produced by the respondent/petitioner. In the supplementary affidavit used by him the copies of the Smart Card had been produced. The respondent/petitioner received the Smart Card on 14th and 17th August, 2021 after submission of the tender and much before the certification of valid technical bid and on the date of participation in the financial process. Thus, the respondent/petitioner was penalized for no fault on its part.

15. Since the appellant herein did not feel the need to ask the respondent Ajay Pal Singh, to produce the Smart Card, it was, therefore, presumed that the appellant never found any deficiency in the Registration Certificate or

documents in respect of any of the TTs produced by either of the respondents. The rejection of the respondents bid would unlawfully benefit other tenderers and hence the learned Single Judge was justified in stating that the court's mind is not free from doubt that the respondents bid was rejected for collateral purposes. Thus, it was arbitrary and illegal to disqualify the respondents for absence of Registration Certificate Smart Card.

16. As held in the B. Yellaswamy Vs South Central Railway, rep. it's General Manager. Secunderabad & Ors. (2007) SCC Online AP 29 at Paragraph 10, the appellants should have clearly specified the requirements of RC book and/or Smart Card in addition to Registration certificate in the NIT. The learned Single Judge correctly adopted the view of Hon'ble Supreme Court in Reliance Energy Limited & Anr. Vs. Maharashtra State Road Development Corporation Limited & Ors. (2007) 8 SCC 1 and applied it to the facts of this case, wherein it stated that "when tenders are invited, the terms and conditions must indicate with legal certainty, norms and benchmarks. This "legal certainty" is an important aspect of the rule of law. If there is vagueness or subjectivity in the said norms it may result in unequal and discriminatory treatment. It may violate doctrine of level playing field". The learned Single Judge was correct in holding that the observation of the the Hon'ble Supreme Court in paragraph 13 and 14 of the Afcons Infrastructure Ltd. vs Nagpur Metrorail Corporation and Ltd. & Anr. reported in (2016) 16 SCC 818 are not applicable to this case.

17. After communicating to the respondents that they are technically qualified and allowing them to participate in the financial bidding process, the appellants are barred by the principle of estoppel, waiver and acquiescence to deny technical eligibility. The learned Single Judge further relied on IRCTC Ltd. & Anr. Vs. Doshion Veolia Water Solutions Pvt. Ltd. & Ors. (2010) 13 SCC 364 while observing that the non-furnishing of Smart Card cannot amount to violation of any essential condition of NIT in the facts of the case. The learned Single Judge also relied on Vice Chairman & Managing Director, CIDCM Ltd. & Anr. Vs Shishir Reality Pvt Ltd. Ors. (2021) SCC OnLine SC 1141 while holding that providing of the Smart Card is only a formality and the non-conformance of it cannot invalidate the entire bid. Moreover, the learned Single Judge correctly came to the finding that the observations of the Hon'ble Supreme Court in The Shilpi Constructions Contractors vs Union of India & Anr. reported in (2020) 16 SCC 489 are distinguishable from the facts of the present case.

18. Having heard the learned counsel for the parties, the perusal of the records of the order passed by the learned Single Judge, this Court is of the view that the learned Single Judge bench was justified in allowing the writ petition to succeed. The learned Single Judge was also correct in stating that the two writ petitioners shall be entitled to be selected under the tender.

19. Thus, no case is made out to interfere in the order of the learned Single Judge.

20. For the foregoing reasons, the appeals are found to be devoid of any merit and are accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata

08.03.2022
PA(BS)