

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

FMA 318 of 2022

With

CAN 1 OF 2022

With

CAN 2 OF 2022

(Through Video Conference)

Reserved on : 09.06.2022

Pronounced on: 07.07.2022

Satyajit Panda

...Appellant

-Vs-

Indian Oil Corporation Limited & Anr.

...Respondents

Present:-

Mr. Biswaroop Bhattacharya,
Mr. Saptarshi Basu,
Mr. Sanjib Seth,
Ms. Dipanwita Saha, Advocates

... for the Appellant

Mr. Amit Kumar Nag, Advocate

... for the Respondents

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

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. By this appeal, the correctness of the order of the Learned Single Judge dated 06.12.2021 passed in W.P.A. No 18646 of 2021 (Satyajit Panda-versus-Indian Oil Corporation Limited & Ors.) has been questioned by the appellant. The appeal is concerned with the order of the Learned Single Judge relating to the validity of the rejection of a tender to the appellant/writ petitioner by the respondent that invited bids for road transportation of bulk petroleum products.

2. The facts of the case as stated by the appellant were that the respondent by a notice of tender in the month of August 2021 invited bids for transportation of bulk petroleum products. In the said bid the respondent herein the writ petitioner took apart. Certain preconditions were set down for the tenderers 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.

3. The Learned Single Judge by his order dated 06.12.21 rejected the petition stating that “it was essential condition for pre-qualification that PESO for all the Tank Trucks offered would have complete Registration Certificates and a valid PESO license and that it appeared from the records that the petitioner had only produced a registration certificate of the TT with his tender and had not produced the relevant registration smart card.” The registration certificate itself issued by the Government of Orissa stipulated that the same was not valid unless it was accompanied by a valid smart card and a certificate of registration.

4. As per the Learned Single Judge, the petitioner’s technical bid was rightly rejected by the Indian Oil Corporation since more than anyone else, the petitioners should have been aware of the requirement of strict compliance of the tender condition and production of smart card along with the Registration

Certificates. Thus, the Learned Single Judge held that the instant writ petition must fail and therefore, dismissed it without any order as to costs.

5. The learned counsel appearing for the appellant appeals on the grounds that the Learned Single Judge had erred in law in not entering into the merit of the case and without considering the material facts, rejected the writ application. It is contended that the appellant produced the Registration certificate along with the tender constituted sufficient compliance of the pre-qualification condition.

6. It was also argued that the Learned Single Judge had erred in not considering that the endorsement at the bottom of the registration certificates that it is not valid in a motor vehicle without smart card, cannot invalidate the appellant's tender. The submission was that the smart card of the vehicles was only a formality which could not invalidate the entire bid.

7. Moreover, the learned counsel appearing for the appellant contended that the registration certificate produced by the appellant constituted sufficient compliance of Section 41 of the Motor Vehicles Act, 1988 and the rejection of the appellant's bid for alleged non-production of registration smart card was, arbitrary and not sustainable in law. Hence, the order of the Learned Single Judge disqualifying the appellant for absence of Smart Card was otherwise bad and liable to be set aside.

8. Having heard the learned counsel for the parties and on perusal of the records, this Court is of the view that Indian Oil Corporation was justified in invalidating the appellant's tender. The learned counsel appearing for the appellant had relied on the decisions of the Hon'ble Supreme Court dated 06-05-2022 in Indian Oil Corporation Ltd. & Anr. v. Ganesh Movers and Logistics (P) Ltd. & Anr. SLP(c) No(s). 8325/2022 with SLP(c) No(s).8223/2022 as well as the decision of this Division bench dated 08.03.2022 in Indian Oil Corporation Ltd. & Ors. v. Ganesh Movers and Logistics (P) Ltd. & Anr

(MAT 71 of 2022 with MAT 76 of 2022) while contending that the rejection of the appellant's bid for alleged non-production of registration smart card was illegal, arbitrary and not sustainable in law.

9. However, the facts in the instant case are distinguishable since by an email dated 1st November 2021, Indian Oil Corporation communicated to the appellant that the appellant's e-tender has been rejected at the preliminary scrutinising stage itself as per Section 41 of The Motor Vehicles Act, 1988. According to Section 41 of The Motor Vehicles Act, 1988:

- (1) An application by or on behalf of the owner of a motor vehicle for registration shall be in such form and shall be accompanied by such documents, particulars and information and shall be made within such period as may be prescribed by the Central Government: Provided that where a motor vehicle is jointly owned by more persons than one, the application shall be made by one of them on behalf of all the owners and such applicant shall be deemed to be the owner of the motor vehicle for the purposes of this Act.*
- (2) An application referred to in sub-section (1) shall be accompanied by such fee as may be prescribed by the Central Government.*
- (3) The registering authority shall issue to the owner of a motor vehicle registered by it a certificate of registration in such form and containing such particulars and information and in such manner as may be prescribed by the Central Government.*
- (4) In addition to the other particulars required to be included in the certificate of registration, it shall also specify the type of the motor vehicle, being a type as the Central Government may, having regard to the design construction and use of the motor vehicle, by notification in the Official Gazette, specify.*

- (5) *The registering authority shall enter the particulars of the certificate referred to in sub-section (3) in a register to be maintained in such form and manner as may be prescribed by the Central Government.*
- (6) *The registering authority shall assign to the vehicle, for display thereon, a distinguishing mark (in this Act referred to as the registration mark) consisting of one of the groups of such of those letters and followed by such letters and figures as are allotted to the State by the Central Government from time to time by notification in the Official Gazette, and displayed and shown on the motor vehicle in such form and in such manner as may be prescribed by the Central Government.*
- (7) *A certificate of registration issued under sub-section (3), whether before or after the commencement of this Act, in respect of a motor vehicle, other than a transport vehicle, shall, subject to the provisions contained in this Act, be valid only for a period of fifteen years from the date of issue of such certificate and shall be renewable.*
- (8) *An application by or on behalf of the owner of a motor vehicle, other than a transport vehicle, for the renewal of a certificate of registration shall be made within such period and in such form, containing such particulars and information as may be prescribed by the Central Government.*
- (9) *An application referred to in sub-section (8) shall be accompanied by such fee as may be prescribed by the Central Government.*
- (10) *Subject to the provisions of section 56, the registering authority may, on receipt of an application under sub-section (8), renew the certificate of registration for a period of five years and intimate the fact to the original registering authority, if it is not the original registering authority.*

10. In a notification G.S.R. 174 (E) dated 1 st March 2019 by the Ministry of Road Transport and Highways, Government of India notified rules for common smart card formats for driving licenses (DL) and vehicle registration certificates (RC) for the entire country, which would help to standardize the documents across all states and prepare a centralized digital repository that can help in checking forgery and duplication. In exercise of the powers conferred by section 27 and section 64 of The Motor Vehicles Act, 1988, the Central Government made the following rules further to amend the Central Motor Vehicles Rules, 1989, namely:

In the Central Motor Vehicles Rules, 1989,

I. In rule 16:

(1) Every driving licence issued or renewed by a licensing authority shall be in Form 6.

(2) Where the licensing authority has the necessary apparatus, [for the issue of a laminated card type or Smart Card type driving licence, such card type or Smart Card type driving licence, as may be specified in the Notification issued by the concerned State Government or Union Territory Administration,] shall be in Form 7.

(3) On and from the date of commencement of this sub-rule, every driving licence issued or renewed by the licensing authority shall be in Form 7.

(a) In rule 16, as per the amendment dated 30th October, 2018,

(i) In sub-rule (1), for the word and figure “Form 6”, the following shall be substituted, namely:-

“in form of a laminated card type without a chip or smart card type in Form 7 conforming to the specification stipulated in Annexure XI”,

(ii) In sub-rule (2), for the word “laminated card type or smart card type driving license, such” the following words shall be substituted, namely:-

“Smart card type driving license, such”;

(iii) Sub-rule (3) shall be omitted;

II. In rule 18:

(1) An application for the renewal of a driving licence shall be made in Form 9 to the licensing authority having jurisdiction over the area in which the applicant ordinarily resides or carries on business and shall be accompanied by— (a) appropriate fee as specified in rule 32; (b) three copies of the applicant recent [passport size photograph], if renewal is to be made in Form 6, (c) the driving licence, (d) the medical certificate in [Form 1-A].

(b) In rule 18, as per the amendment dated 30th October, 2018, in sub-rule(1) for 'clause (b)', the following 'clause' shall be substituted, namely:- "(b) applicant's recent passport size photograph,";

III. In rule 32:

Note 1.- Where a laminated card without chip or smart card type driving license is issued in form 7, an additional fee of two hundred rupees shall be levied.

(c) In rule 32, as per the amendment dated 30th October, 2018, in the 'Note', for 'clause 1', the following 'clause' shall be substituted, namely:- "1. Where a laminated card without chip or smart card type driving license is issued in form 7, an additional fee of two hundred rupees shall be levied.";

IV. In rule 48:

(3) A certificate of registration, in the name of the owner, in Form 23A shall be issued electronically.

(d) In rule 48, as per the amendment dated 30th October, 2018, for the word and figures, "form 23 or Form 23A", the following words and figures shall be substituted, namely:- "Form 23A conforming to the specifications stipulated in Annexure XI";

V. In rule 81:

Note 2.- Where the certificate of registration issued is in the form of laminated card without chip or smart card type driving license , an

additional fee of two hundred rupees shall be charged except in the case of issue of fresh certificate of registration after cancellation of the hire purchase or lease or hypothecation agreement.

(e) In rule 81, as per the amendment dated 30th October, 2018,

for 'Note 2', the following 'Note' shall be substituted, namely:-

“Note 2. Where the certificate of registration issued is in the form of laminated card without chip or smart card type driving license , an additional fee of two hundred rupees shall be charged except in the case of issue of fresh certificate of registration after cancellation of the hire purchase or lease or hypothecation agreement.”;

(a) The “FORM 6” shall be omitted;

11. In the instant case however, the appellant/ writ petitioner had failed to submit copies of smart card at the preliminary scrutinising stage as prescribed in Section 41 of the Motor Vehicles Act 1988 read with Central Motor Vehicles Rules 1989 and thus failed to prove that the vehicle in question is registered in the name of the appellant. Thus, the appellants's/writ petitioner's bid was rejected in the preliminary technical stage. However, in Indian Oil Corporation Ltd. & Ors. v. Ganesh Movers and Logistics (P) Ltd. & Anr (MAT 71 of 2022 with MAT 76 of 2022), the bid was rejected not in the technical stage but in the subsequent financial stage and thus the appeal in MAT 71 of 2022 with MAT 76 of 2022 was allowed.

12. For the foregoing reasons, the appeal fails and is dismissed. All pending applications stand disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE