

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 19413 of 2018

With

CAN 1 of 2022

Sukhjit Singh & Anr

vs.

Hindustan Petroleum Corporation Limited & Ors.

For the petitioners : Mr. Sirsanya Bandopadhyay, Adv.
Mr. Arka Kumar Nag, Adv.

For the respondent nos. 8 : Mr. Debabrata Saha Roy, Adv.
& 9 : Mr. Subhankar Das, Adv.
: Mr. Neil Basu, Adv.

For HPCL : Mr. Ranjan Bachawat, Sr. Adv.
Mr. Chayan Gupta, Adv.
Mr. Prasun Mukherjee, Adv.
Mr. Deepak Agarwal, Adv.

Last Heard on : 20.09.2022.

Delivered on : 21.09.2022.

Moushumi Bhattacharya, J.

1. The petitioners participated in a tender floated by the Indian Oil Corporation Limited (IOC), Bharat Petroleum Corporation Limited (BPC) and Hindustan Petroleum Corporation Limited (HPC) for bulk LPG transportation contract by road for the State of Bihar. The petitioners are aggrieved by the respondent Oil Manufacturing Companies (OMCs) not giving preferential treatment to the petitioners under clause 4 of section 5 (Tender Evaluation Criteria) of Part-A: Technical/Commercial Bid of the tender dated 23rd January, 2018. Under the amended clause 4, the State registered Tank Trucks (TTs) were to be given preference over other State registered TTs subject to their quoting bids at floor rates. The case sought to be made out by the petitioners is that although the petitioner no. 1 quoted 52 TTs and the petitioner no. 2 quoted 15 TTs, the OMCs rejected 7 TTs of the petitioner no. 1 and 14 TTs of the petitioner no. 2. Hence, of the 67 TTs quoted by the petitioners, 21 TTs were rejected by the respondent OMCs. The reason for refusing to give preferential treatment to the 21 TTs of the petitioners is that the TTs bore a “NL” (Nagaland) mark.

2. According to the learned counsel appearing for the petitioners, the refusal of preferential treatment on the ground of the TTs bearing a Nagaland registration mark is wholly erroneous since all 21 TTs of the petitioners were registered in Bihar and should hence have been given the benefit of clause 4 of section 5 of the tender. In essence, the petitioners

claim that all 67 TTs of the petitioners (and not only 46 TTs) should have been used by the OMCs for the scope of work contemplated in the NIT.

3. Respondent nos. 8 and 9 being the Registering Authority and Regional Transport Officer, Motor Vehicles Department, Government of Bihar respectively support the contention that the refusal to give preferential treatment to all 67 TTs of the petitioners is without basis. Paragraph 5 of the affidavit filed by the respondent nos. 8 and 9, enumerates a list of all the 21 TTs of the petitioners containing particulars of the dates of entry for registration at Patna and the individual dates of registration. The list is in support of the averment that the 21 TTs of the petitioners are registered at Patna under the Department of Transportation, Government of Bihar. It is relevant to state that the said affidavit was filed by the respondent nos. 8 and 9 pursuant to an order dated 2nd July, 2021. The affidavit of respondent nos. 8 and 9 sufficiently takes care of the first plank of the objection taken on behalf of the OMCs that the 21 TTs of the petitioners were rejected as they bore Nagaland registration.

4. Section 47(1) of The Motor Vehicles Act, 1988 relates to assignment of a new registration mark on removal of vehicle to another State. The said provision deals with a situation where a motor vehicle registered in one State has been kept in another State, for a period exceeding twelve months and allows prescribed time to the owner to obtain a new registration mark. Hence, the rejection of the 21 TTs of the petitioners on the ground that they were not "State registered", i.e., not registered in Bihar at the relevant point of time, is wholly without basis. It may also be relevant to state that under

section 2(37) of the 1988 Act, “registering authority” means an authority empowered to register motor vehicles under Chapter IV of the Act and is thus empowered to assign a new registration mark to a vehicle under section 47(1) of the Act. The respondent OMCs cannot construe the provision of the Act in a manner which is beyond the contemplation of the provisions of the Act and to the detriment of the petitioners.

5. The related question is whether the 21 TTs of the petitioners were registered in Bihar at the relevant point of time i.e. as on 10th April, 2018 which was the last date for submission of completed e-Tender documents online. The relevant date would appear from a Corrigendum of the tender floated by the OMCs on 23rd January, 2018. Clause 2 of the Corrigendum gives the tender schedule for downloading of the tender and specifies 10th April, 2018 as the last date for submission of the tender documents.

6. As stated above, the list of registration particulars of the 21 TTs belonging to the petitioners given in paragraph 5 of the affidavit of the respondent nos. 8 and 9 show that save and except two TTs which were registered at Patna on 25th January, 2018, the remaining 19 TTs were registered at Patna on 7th March, 2018. Hence, all 21 TTs of the petitioners were registered in the State of Bihar as on the last date of submission of the e-Tender documents being 10th April, 2018. This further strengthens the case made out by the petitioners and goes to show that the refusal to give preferential status to the remaining 21 TTs of the petitioners on the ground stated in the affidavit-in-opposition of the OMCs is totally untenable.

7. This Court is therefore inclined to direct the OMCs to rescind the decision of disallowing the 21 TTs of the petitioners as preferential under the amended clause 4 of the Section 5 of the tender.

8. The consequential relief prayed for is to grant liberty to the petitioners to approach an appropriate civil forum for claiming damages against the respondent OMCs for the loss of business from 2018-2022. Counsel submits that although this relief is not part of the writ petition, the reliefs can be moulded for a complete adjudication of the *lis*.

9. This Court finds substance in the contention particularly since the petitioners had no way of knowing that the writ petition, filed in 2018, would remain pending adjudication for 4 years until 2022. The objection taken on behalf of the OMCs that the petitioners accepted plying their TTs in Assam and have received payment for the same in the intervening 4 years cannot be accepted for the following reasons. First, the petitioners accepted the offer and are using the vehicles in Assam without prejudice to their rights; and second, there is a substantial gap in the profits which the petitioners could have made in Bihar, where all the TTs of the petitioners were registered as compared to Assam which is a neighbouring State. The NIT in fact contains a provision of "Cluster of States" (clause V) which groups West Bengal, Odisha, Bihar and Jharkhand as one cluster and Assam & Meghalaya, Tripura, Manipur, Nagaland, Arunachal Pradesh and Mizoram as a different cluster.

10. Since this Court has specifically found that the ground of refusing to treat all the TTs of the petitioners under the preferential clause cannot be

sustained, the petitioners are also found to be entitled to consequential relief for the loss of business in respect of the 21 TTs which were excluded from the preferential clause. The moulding of relief is all the more warranted since 4 years have already passed out of the contract period of 5 years, and the petitioners have lost substantial business during those 4years.

11. The fact that the petitioners have been deprived of a valuable right in terms of Article 19(1)(g) of the Constitution of India is without doubt. The petitioners were before the Court in September, 2018 without delay, against the decision of HPCL refusing preferential status to 21 TTs of the petitioners. The fact of the petitioners' vehicles having been used in the State of Assam cannot diminish the petitioners' right to claim damages for the 4 years that the writ petition has been kept pending. Clause II of the NIT indicates a RTKM (roadship before kilometer) for the State of Bihar further reflecting that a Tank Truck (TT) used in any other State outside Bihar would incur a higher monthly mileage rate per truck in RTKM. The petitioners are also at the fag end of the contract as clarified in clause II of the NIT which states that the contract will be valid for a period of 5 years with effect from 1st September, 2018.

12. In other words, had the petitioners TTs been inducted in Bihar from September, 2018, the petitioners would not have incurred any loss or additional expense in plying the 21 TTs outside the State of Bihar. The arbitrary decision of the respondents to exclude these 21 TTs from the preferential clause is wholly attributable for the loss.

13. In *Dwarka Nath vs. Income Tax Officer, Special Circle, D-Ward, Kanpur*; AIR 1966 SC 81, the Supreme Court, in the irreplaceable words of Justice K. Subba Rao, opined that Article 226 of the Constitution confers a wide power on the High Courts “to reach injustice wherever it is found”. The Supreme Court was of the view that the High Courts have the power to issue not only writs but directions and orders other than the prerogative writs which enables High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Hence, there is no impediment, in fact or in law, to suitably mould the relief in the present writ petition in order to correct the injustice caused to the petitioners by the arbitrary decision of the respondent OMCs.

14. A Coordinate Bench in the judgment dated 12th March, 2021 in WPA No.17970 of 2018 (*Cima Roadliners vs. Hindustan Petroleum Corporation Ltd.*) was also of the view that the rejection of the petitioners bid by the Corporation on the ground that the TTs had not been registered in Bihar was unreasonable and discriminatory. The Corporation was directed to act in terms of the tender and give preferential treatment to the TTs offered by the petitioners. This Court has been informed that the said judgment was not challenged by the respondent Corporation and has attained finality. The present petition contains almost identical facts and the petitioners are placed on a very similar footing as the petitioners in *Cima Roadliners*. This Court does not find any reason to take a different view on the identical facts in the present writ petition.

15. *Consortium of Titagarh Firema Adler S.P.A. – Titagarh Wagons Ltd. vs. Nagpur Metro Rail Corporation Limited*; (2017) 7 SCC 486 involved interpretation of the tender conditions which is not the relief claimed in the present case. *Silppi Constructions Contractors vs. Union of India*; (2020) 16 SCC 489 involved two interpretations where the Supreme Court held that the interpretation of the author must be accepted. In the present case, the interpretation of the Coordinate Bench in *Cima Roadliners* support the case made out by the petitioners. *Agmatel India (P) Ltd. vs. Resoursys Telecom*; (2022) 5 SCC 362 involved subsequent facts which the writ petitioner sought to take advantage of. Moreover, the said case also involved interpretation of the conditions in the tender document which is also not the case here.

16. In view of the above, this Court finds sufficient reason to grant the relief prayed for. The respondent OMCs shall forthwith issue appropriate directions for the remaining 21 TTs offered by the petitioners and grant preferential treatment to the said TTs. The same should be done within a period of three weeks from the date of communication of this judgment and order. The petitioners are also given liberty of approaching a civil forum for claiming damages for the intervening 4 years from September, 2018 till the date the OMCs accord preferential status to the 21 TTs of the petitioners. The claim for damages shall be subject to limitation and the discretion of the Court receiving the prayer for claim.

17. WPA 19413 of 2018 is disposed of in terms of the above. All connected applications are also disposed of accordingly.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)