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W.P.Nos.14901 and 14906 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **22.06.2022**

PRONOUNCED ON : **29.06.2022**

CORAM

THE HONOURABLE Mr. JUSTICE ABDUL QUDDHOSE

W.P.Nos.14901 and 14906 of 2022

and

W.M.P.Nos.14112, 14113, 14117 and 14119 of 2022

AMG. Vijaykumar

... Petitioner in W.P.No.14901 of 2022

Jyothi Constitutions

Rep by its Managing Partner V.Surya

S/o. Vijaykumar,

5 & 6, Jyothi Nagar,

Chennai Bye Pass Road,

Trichy- 620 010.

... Petitioner in W.P.No.14906 of 2022

Vs.

1.The General Manager (Contracts Cell)

India Oil Corporation Ltd.,

Tamil Nadu State Office,

No.139, Uthamar Gandhi Salai,

Nungambakkam,

Chennai - 600 034.

2.The Deputy General Manager (Contracts Cell)

India Oil Corporation Ltd.,



Tamil Nadu State Office,
No.139, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.

... Respondents in both W.Ps.

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other writ or order in the nature calling for the records and to quash the technical evaluation of the 2nd respondent dated 08.06.2022 with relation to the petitioner in Tender ID No.:2022_SROTN_146464_1 in Tender reference No.SRCC/PT/179/TNSO/2021-22 and consequentially direct the respondents to permit the petitioners to participate in the price bid.

For Petitioners : Mr.Vijay Narayan
Senior Counsel
for Mr.P.Solomon Francis

For Respondents : Mr.M.S.Krishnan
Senior Counsel
for Mohammed Fayaz Ali

COMMON ORDER

The petitioner has challenged the rejection of its technical bid by the respondent/ Oil Corporation under the impugned orders both dated 08.06.2022.



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2. The petitioner is a transport contractor. He has submitted his bid in the auction conducted by the respondent / Oil Corporation for appointment of transport contractors. Under the impugned orders, the petitioner's bid has been rejected during technical evaluation by the respondent / Oil Corporation for the reason "Bidder has struck off declaration - I stating NA in the attachment - 11". According to the respondent / Oil Corporation, the said declaration submitted by the petitioner is invalid as the petitioner has erroneously struck off the declaration by stating it is not applicable.

3. The petitioner has challenged the impugned orders both dated 08.06.2022, which is in respect of two tenders rejecting the petitioner's bid on the following grounds:

a) the impugned order of the second respondent is arbitrary and against the principles of natural justice;

b) the second respondent failed to note that the declaration was filled up and uploaded;

c) the second respondent failed to note that the declaration sought in the query dated 02.05.2022 raised by the second respondent is a repetitive declaration, as the same has already been given by the petitioner. According



to the petitioner, the inadvertent act of striking off is only an insignificant error and not grave enough to reject the technical bid of the petitioner.

However, it is the case of the respondent / Oil Corporation that the declaration is an essential requirement as part of the tender documents. According to them, even if assuming the said declaration is trivial in nature, being a high value tender, the petitioner ought to have been careful while submitting the tender documents and cannot blame his consultant for the defect. They would also contend that after scrutiny of the tender documents of the petitioner, a query was raised by the respondent / Oil Corporation on 02.05.2022, requesting the petitioner to submit the declarations as required under the tender document which includes declaration - 'I', 'II' and 'III' (attachment - 11), which was the reason for rejection of the petitioner's bid under the impugned orders during technical evaluation made by the respondent / Oil Corporation. According to the respondent / Oil Corporation, despite the said query, the petitioner has not submitted the necessary declaration but instead has made an endorsement that the said declaration is not applicable (NA);

d) if the petitioner's bid is now accepted after its rejection under the impugned orders, it will lead to great ramification, as other bidders whose



bids have been rejected pursuant to the technical evaluation, will also challenge the rejection before the appropriate Court;

e) The respondent is an Oil Corporation and therefore, any delay in the appointment of transport contractors will not be in public interest, as it would lead to disruption of petroleum products supply to various petroleum retail outlets.

4. Heard Mr.Vijay Narayan, learned Senior Counsel for the petitioners and Mr.M.S.Krishnan, learned Senior Counsel for the respondent.

5. Mr.Vijay Narayan, learned Senior Counsel drew the attention of this Court to the impugned orders as well as to declaration - 'I' (attachment - 11) which has been struck off by the petitioner as not applicable (NA). He would submit that the said declaration will come into effect only after the contract is awarded to the petitioner and therefore, according to him, the petitioner has rightly made an endorsement in the said declaration as not applicable (NA), even



though the petitioner has signed the said declaration.

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6. Mr.Vijay Narayan, learned Senior Counsel also drew the attention of this Court to the various undertakings given by the petitioner as part of the tender documents and would submit that a similar undertaking as found in declaration - 'I' (attachment - 11) was given in those letters of undertaking also. Therefore, he would submit that the reason for rejection of the petitioner's bid under the impugned orders is arbitrary, irrational, illogical and suffers from malafides. According to him, if the petitioner is allowed to participate in the tender, it will result in further competition which will enable the respondent / Oil Corporation to get the best possible deal. Therefore, according to him, the petitioner must be allowed to participate in the tender in public interest.

7. Mr.Vijay Narayan, learned Senior Counsel also drew the attention of this Court to the following authorities in support of his contention that the petitioner's bid has been arbitrarily, irrationally,



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illogically and malafidely rejected:

a) ***Reliance Energy Ltd. and another Vs. Maharashtra State Road Development Corporation Ltd. and others*** reported in (2007) 8 SCC 1;

b) ***Pace Digitek Infra Pvt. Ltd., (Represented by its Authorised Signatory) and Another Vs. Tamil Nadu Fibernet Corporation Ltd., Rep. by its Managing Director and Another*** reported in 2021 SCC Online Mad 900;

c) ***Vidarbha Irrigation Development Corporation and others Vs. Anoj Kumar Agarwal and others*** reported in (2020) 17 SCC 577;

d) ***Poddar Steel Corporation Vs. Ganesh Engineering Works and others*** reported in in (1991) 3 SCC 273.

8. Per contra, Mr.M.S.Krishnan, learned Senior Counsel for the respondent / Oil Corporation would submit as follows:

a) Even though, the respondent / Oil Corporation sent a query to the petitioner on 02.05.2022, calling upon the petitioner to submit the declaration which includes declaration - 'I', 'II' and 'III' (attachment - 11)



also, the petitioner failed to submit the Declaration-I, but instead, has stated that the said declaration is not applicable (NA).

9. Mr.M.S.Krishnan, learned Senior Counsel would submit that the said declaration has to be necessarily given by the petitioner and is very much applicable and cannot be considered to be insignificant and not necessary. He would further submit that 55 out of 58 bidders have submitted the declaration - 'I', 'II' and 'III' (attachment - 11) in the proper form and there is no ambiguity with regard to its mandatory requirement as part of the tender documents. According to him, the petitioner cannot be excused for not submitting the declaration in the proper form. According to Mr.M.S.Krishnan, learned Senior Counsel the said declaration is very much applicable as part of the tender documents.

10. Mr.M.S.Krishnan, learned Senior Counsel would further submit that any bidder will have to strictly comply with the tender requirements. According to him, whether the declaration to be submitted is trivial or important, is immaterial, as all bidders have to



strictly comply with all the tender requirements.

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11. Mr.M.S.Krishnan, learned Senior Counsel would further submit that if the petitioner's bid is now accepted, there is a possibility that similarly placed persons will also challenge the rejection of their respective bids by raising the very same ground as raised by the petitioner in this Writ petition. He would submit that the respondent being an Oil Corporation and appointment of transport contractors being very much essential for the proper supply of petroleum products to the retail outlets, public interest will be defeated if petitioner's bid is to be accepted now, as according to him, it will open up a pandora's box as other similarly placed persons, whose bids have been rejected, will also challenge the rejection.

12. Mr.M.S.Krishnan, learned Senior Counsel drew the attention of this Court to the following authorities in support of his submissions:

a) Tamil Nadu Police Housing Corporation Ltd., Vs. P & C Projects (P) Ltd., reported in 2018 (5) CTC 387;



b) K.M.Mustafa Vs. Indian Railway Catering & Tourism

Corporation (IRCTC) Ltd., reported in 2019 (2) CTC 413;

c) W.B.State Electricity Board Vs. Patel Engineering Co. Ltd.

and others reported in (2001) 2 SCC 451.

Discussion:

13. The technical bid of the petitioner has been rejected on the ground that, he has struck off declaration-I, stating not applicable (NA) in the Attachment – 11.

14. The subject declaration – I, which is part of the tender documents reads as follows:

“We declare that we have complied with and have not violated any clause of the standard agreement”.

15. Whether striking of the above mentioned declaration can be treated as a defect or a deficiency for the purpose of rejecting the technical bid of the petitioner is the only issue that arises for



consideration in these Writ petitions.

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16. Any person will comprehend and understand declaration-I as a declaration, which has to be given only after the award of the contract, as it declares that the signatory has complied with and have not violated any clause of the standard agreement. The standard agreement is the contract, which contains the terms and conditions, which a successful bidder who has been awarded with the contract has to sign and enter into. In the tender documents submitted by the petitioner, declaration – I referred to supra was struck off by the petitioner as not applicable (NA). Though the name of the petitioner and his signature is found, the only reason for the rejection of the technical bid of the petitioner is that the petitioner has made an endorsement in declaration-I that it is not applicable. Whereas, according to the respondent / Oil Corporation, it is very much applicable and therefore there is a defect as the petitioner has made an endorsement that it is not applicable (NA). The contention of the respondent is that even if the petitioner has not complied with a trivial



requirement under the tender, the respondent / Oil Corporation have the legal right to reject the tender. It is also the contention of the respondent / Oil Corporation that the petitioner was put on notice after the scrutiny of his tender that he has not submitted declaration – I, II and III by the letter dated 02.05.2022. According to them, despite the said notice, the petitioner has not submitted the declaration – I referred to supra and therefore, respondent / Oil Corporation has rightly rejected the petitioner's technical bid. However, it is the contention of the petitioner that declaration – I has been submitted by the petitioner only in accordance with its true meaning and that is the reason for the petitioner to have made an endorsement that the said declaration is not applicable (NA).

17. “Defect”, means “something that is wrong” and “Deficiency” means “a fault or a weakness in somebody / something”. Only in cases where the bidder has not complied with the tender requirements, either due to defect / deficiency / mistake, the tender can be rejected. We need to now examine as to whether the striking of declaration – I referred to



supra by the petitioner as not applicable (NA) is a defect / deficiency / mistake, which enables the respondent / Oil Corporation to reject the technical bid of the petitioner.

18. In so far as the meaning for "Declaration-I" is concerned, there can only be one meaning. The declaration makes it clear that once a person is awarded with the contract by the respondent / Oil Corporation, he has to declare that he has complied with and has not violated any standard clause of the standard agreement. Therefore, declaration -I will come into effect if at all only after the execution of the contract by the person, who has been awarded the contract. The petitioner by using his intelligible wisdom by understanding the true meaning of the declaration has made an endorsement that the said declaration is not applicable (NA), which in the considered view of this Court cannot be considered to be improper and cannot be treated as defect / deficiency / mistake. The petitioner is yet to be awarded the contract by the respondent / Oil Corporation and therefore acting upon its true and only meaning made an endorsement in the Declaration-I as



not applicable.

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19. The petitioner has complied with all the tender requirements but the respondent / Oil Corporation has rejected the technical bid of the tender only on the ground that the petitioner has made an endorsement that the declaration -I is not applicable (NA). In tender matters, public interest outweighs private interest. The respondent / Oil Corporation have floated the tender only in public interest to get the best possible deal at the best possible price. The subject tender is to appoint transport contractors for the purpose of the transportation of petroleum products, which is an essential commodity.

20. The petitioner has also claimed that he has been in the business for quite long number of years and that he has purchased new trucks specifically to suit the needs of the respondent / Oil Corporation. The petitioner also claims that the tender documents were submitted on behalf of the petitioner by their consultant, who is very experienced in submission of tender documents. In the considered view of this Court,



the petitioner has only applied the one and only true meaning and made an endorsement as "not applicable" which is correct considering the nature of declaration which will come into effect only after the award of the contract to the petitioner. The petitioner has complied with all the tender requirements. It is no doubt true that when there are defects in the tender documents, the employer is having the right to reject the tender, even if the said defects are trivial in nature but when the petitioner has not committed any mistake in the tender documents submitted by him, the respondent cannot arbitrarily and by total non application of mind can reject the technical bid submitted by the petitioner.

21. Mr.M.S.Krishnan, learned Senior Counsel for the respondent / Oil Corporation relied upon two Division Bench Judgments of this Court in the case of

a) Tamil Nadu Police Housing Corporation Ltd., Vs. P & C Projects (P) Ltd., reported in 2018 (5) CTC 387;

b) K.M.Mustafa Vs. Indian Railway Catering & Tourism



Corporation (IRCTC) Ltd., reported in 2019 (2) CTC 413;

and would submit that even if the deficiencies or mistakes or omissions in the submission of tender documents are trivial in nature, the tender evaluation committee has got the legal right to reject the tender. According to him, though the non submission of the declaration – I by the petitioner may be trivial in nature, the respondent / Oil Corporation has got the legal right to reject the tender.

22. Mr.M.S.Krishnan, learned Senior Counsel for the respondent / Oil Corporation also relied upon a Judgment of the Hon'ble Supreme Court in the case of ***W.B.State Electricity Board Vs. Patel Engineering Co. Ltd. and others*** reported in ***(2001) 2 SCC 451*** and after referring to the said Judgment would submit that the bidder will have to strictly adhere to the terms and conditions of the tender and since the petitioner did not choose to make the correction in the declaration-I submitted by him, the respondent / Oil Corporation has rightly rejected his technical bid which cannot be considered to be a pedantic approach. The said decision will not apply to the facts of the



instant case as the one and only true meaning of declaration-I is that the person who has been awarded the contract has to issue a declaration stating that he will abide by the terms and conditions of the standard agreement, which will be entered into by the successful bidder. Even before the contract is signed by the successful bidder, the declaration-I cannot be made applicable to any bidder and rightly the petitioner has made an endorsement while submitting the tender documents that the said declaration is not applicable (NA).

23. There is no defect / deficiency / mistake / omission in the submission of the tender documents by the petitioner. In the decision rendered by the Hon'ble Supreme Court in the ***W.B.State Electricity Board Vs. Patel Engineering Co. Ltd. and others*** case referred to supra, it has been observed as follows:

"instructions to bidders leaves no room for doubt that once the unit rate and line item total are filled in by the bidder, both the quoted unit rate and item total are treated as unalterable at the instance of the



bidder, though arithmetical errors in arriving at line item total by multiplication are permitted to be corrected by the Appellant's authorized representative."

In that decision, the bidder corrected the mistakes without first seeking clarification from the tender inviting authority as per the tender conditions. However, in the case on hand, the petitioner has not corrected the mistakes, but his technical bid has been rejected only on the ground that declaration-I has been endorsed as not applicable (NA). Since the meaning of declaration-I is unambiguous and there can be only one meaning and the petitioner having made an endorsement "as not applicable (NA)" correctly, the rejection of the technical bid only on the ground that declaration-I was not given, is arbitrary, irrational, illogical and perverse, which shocks the conscience of this Court. Similar undertaking as the one sought for in the declaration-I has also been given by the petitioner along with the tender documents which are also filed along with these Writ petitions. By total non application of mind to the true meaning of Declaration-I and in an arbitrary, irrational,



illogical and perverse manner, the respondent / Oil Corporation have rejected the petitioner's bid on the ground that he has not submitted the declaration-I, which has shocked the conscience of this Court.

24. In the decision rendered by the Hon'ble Supreme Court in *Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and Another* relied upon by Mr.Vijay Narayan, learned senior counsel, it has been held that the words used in tender documents cannot be ignored or treated as redundant or superfluous. The one and only meaning for declaration-I is that the successful bidder who has been awarded the contract will abide by the terms and conditions of the standard agreement. The stage for execution of such a declaration has not reached. The present stage of the tender is only the scrutiny of the technical bids of the tenderers and therefore, the petitioner has rightly made an endorsement in the declaration-I based on its true meaning that the said declaration is not applicable (NA). No prudent tender inviting authority who is interested in public interest by getting the best deal out of strong competition would have rejected the tender.



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25. In the decision relied upon by Mr.Vijay Narayan, learned Senior Counsel for the petitioner in the case of ***Reliance Energy Ltd. and another Vs. Maharashtra State Road Development Corporation Ltd. and others*** reported in ***(2007) 8 SCC 1***, it has been held that “*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”.

26. In the case on hand, when the meaning of declaration-I makes it clear that the said declaration has to be given only after a person has been declared as a successful bidder and has been awarded the contract, the respondent ought not have rejected the petitioner's tender only on the ground that he has not submitted declaration-I, but has made an endorsement that the said declaration is not applicable (NA). In the aforesaid decision, the Hon'ble Supreme Court has also followed another decision of the Hon'ble Supreme Court in ***Reliance Airport***



Developers (P) Ltd., Vs. Airports Authority of India reported in **2006**

(10) SCC 1, wherein it has been held that *the grounds upon which administrative action is subjected to control by judicial review are classifiable broadly under three heads, namely, illegality, irrationality and procedural impropriety*. The rejection of the technical bid of the petitioner under the impugned orders falls under all the three heads namely illegality, irrationality and procedural impropriety. The non acceptance of the petitioner's bid by an arbitrary and irrational order, will not only cause injustice to the petitioner but is also detrimental to public interest. Any tender is floated only in public interest. The tender is floated to get the best possible deal for the best possible price. Being an Oil Corporation, transportation of petroleum products through contractors involve huge expenditure, which drains the public exchequer. Therefore, contracts for appointment of transport contractors will have to be given to the contractor, who has given best deal for the best price. At the same time, he has to be in a position to strictly adhere to the terms and conditions of the contract. The acceptance of the petitioner's bid will be in public interest. Injustice is



not alone caused to the petitioner, but the public interest has also suffered on account of the rejection of the petitioner's bid by giving arbitrary, irrational and unfair reasons.

27. Mr.M.S.Krishnan, learned Senior Counsel appearing for the respondent would contend that if the petitioner's bid is allowed to be accepted, similarly placed tenderers will jump into the wagon and it will open a pandora's box, which according to him is not in public interest. The aforesaid contention of the learned Senior Counsel appearing for the respondent / Oil Corporation has to be rejected in view of the fact that price bids are yet to be opened. Excepting for the petitioner, no other bidder has challenged the rejection of the technical bids. When the price bids are yet to be opened, the respondent's / Oil Corporation's contention is an unreasonable and an unfair one which would amount to stifling competition.

28. For the foregoing reasons, in view of the fact that the reason for the rejection of the technical bids submitted by the petitioner is arbitrary and suffers from irrationality and procedural impropriety



shocking the conscience of this Court, the petitioner's technical bids will have to be accepted for further evaluation on merits and in accordance with law.

29. Accordingly, these Writ Petitions are allowed as prayed for.

No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

29.06.2022

Index : Yes/No
Speaking Order : Yes / No
ab

To

1.The General Manager (Contracts Cell)
India Oil Corporation Ltd.,

23/25



W.P.Nos.14901 and 14906 of 2017

Tamil Nadu State Office,
No.139, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.

2.The Deputy General Manager (Contracts Cell)
India Oil Corporation Ltd.,
Tamil Nadu State Office,
No.139, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.



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W.P.Nos.14901 and 14906 of 2022

ABDUL QUDDHOSE. J,

ab

Pre-delivery Order in

W.P.Nos.14901 and 14906 of 2022 and
W.M.P.Nos.14112, 14113, 14117 and 14119 of 2022

29.06.2022