

**In the High Court at Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**W.P.A. No. 4640 of 2023**

**Jai Hind Logistics and another  
Vs.  
Indian Oil Corporation Ltd. and others**

|                                  |   |                                                                                                               |
|----------------------------------|---|---------------------------------------------------------------------------------------------------------------|
| For the petitioners              | : | Mr. Debabrata Saha Roy<br>Mr. Pingal Bhattacharyya<br>Mr. Subhankar Das<br>Mr. Neil Basu<br>Mr. Sankha Biswas |
| For the respondent<br>Nos.1 to 7 | : | Mr. Amit Kr. Nag<br>Mr. Partha Banerjee                                                                       |
| For the respondent<br>No.9       | : | Mr. P.K. Dutta<br>Mr. Anant Shaw<br>Mr. Santanu Deb Roy<br>Mr. Mainak Ganguli                                 |
| For the respondent<br>No.10      | : | Mr. Kallol Bose<br>Mr. Joy Chakraborty<br>Ms. Ipsita Ghosh                                                    |
| Hearing concluded on             | : | 14.07.2023                                                                                                    |
| Judgment on                      | : | 19.07.2023                                                                                                    |

**Sabyasachi Bhattacharyya, J:-**

1. The petitioner and the respondent nos.9 and 10 participated in a tender floated by the IOCL (Indian Oil Corporation Limited) under a Two-Bid System from Tank Truck (TT) owners for an award of contract for road transportation of bulk petroleum products. The petitioner

participated therein but was disqualified at the technical evaluation stage.

2. The present writ petition has been preferred challenging the acceptance of the bids of respondent nos.9 and 10 as successful bidders.
3. It is argued that, after the technical stage being crossed, a reverse auction was to be held within the contemplation of the tender. Thereafter, the bidder with the newest vehicles would be chosen as successful and work orders would be issued to them.
4. In the present case, it is argued, the respondent nos.9 and 10 furnished forged documents, on the basis which they were declared to be successful bidders. It is argued by the petitioner that fraud vitiates all and, as such, even the writ court can enter into the question as to whether the forgery committed by the respondent nos.9 and 10, allegedly in collusion with the IOCL, vitiates the tender process.
5. Learned counsel for the petitioner, in such context, cites *Munjal Showa Ltd. Vs. Commissioner of Customs and Central Excise (Delhi-IV)*, reported at 2022 SCC OnLine 1296, where it was held that fraud vitiates everything. Learned counsel also relies on (2008) 12 SCC 306 [*Behari Kunj Sahkari Avas Samiti Vs. State of Uttar Pradesh and others*], where it was observed by the Supreme Court that a person committing fraud is not entitled to any equitable remedy.
6. Learned counsel for the petitioner submits that there were gross discrepancies in the RC Books/Smart Cards offered in respect of TTs

of the respondent nos.9 and 10, insofar as the copies thereof annexed to the opposition of the IOCL and the said respondents are concerned.

7. Uploading of RC Book/Smart Card is mandatory in tenders for engagement of TTs, it is contended. In support of such submission, the petitioner cites an unreported judgment of this Court dated April 19, 2022 passed in *WPA No.4391 of 2022*. In the said context, an unreported Division Bench judgment of this Court passed on July 18, 2022 in *MAT 687 of 2022*, whereby the Single Judge decision cited above was overturned, has also been cited. Lastly, an unreported Supreme Court judgment dated September 30, 2022, passed by the Supreme Court in *Civil Appeal No.7038 of 2022*, which distinguished the Division Bench judgment and upheld the judgment of the learned Single Judge, is also cited by the petitioner.
8. It is submitted next that merely because there is some disputed question of fact, the writ court need not necessarily refuse to entertain a writ petition. In support of such contention, learned counsel places reliance on *2021 SCC OnLine SC 99 [Unitech Limited and Others Vs. Telangana State Industrial Infrastructure Corporation (TSIIC) and Others]*, where portions of the judgment reported at *(2004) 3 SCC 553 [ABL International Limited and another Vs. Export Credit Guarantee Corporation of India Ltd. and others]* were also considered.
9. Learned counsel submits further that, in an appropriate case, where there is a violation of a fundamental right, in the present case under Article 14 of the Constitution of India, and/or natural justice, alternative remedy is not a bar. In such context, the petitioner cites

*Madhya Pradesh High Court Advocates Bar Association and Another Vs. Union of India and Another*, reported at 2022 SCC OnLine SC 639.

10. Learned counsel for the respondent no.9 argues that the authenticity of the Registration Certificates issued by the concerned RTO (Regional Transport Officer), with the seal and signature of the registering authority, has not been rebutted. It is evident from the said Certificates that the vehicles were registered on November 25, 2022 and the Registration Certificates were issued on November 28, 2022. The authenticity of those was also confirmed by the RTO by a letter dated April 17, 2023. All the said documents are part of a report filed in the form of an affidavit by the IOCL and affirmed on June 6, 2023, which is a part of the records of the instant writ petition.
11. It is further argued that even if there is any discrepancy in the m-Parivahan Portal, that is, the “Vahan” portal, the respondent no.9 cannot be saddled with any responsibility in that regard. The writ petitioners’ Registration Certificates were also issued by the same authority on the same date, that is, November 28, 2022.
12. Learned counsel appearing for the respondent no.10 contends that the writ petition is liable to be dismissed *in limine*, since the petitioner participated in the tender process. The tender process was completed and Letter of Acceptance was issued on February 8, 2023. Work order was subsequently issued on March 4, 2023. Hence, there is no scope of interference in the present writ petition at this stage.
13. It is argued that the petitioner sought to confuse a previous co-ordinate Bench after receiving a copy of the affidavit-in-opposition of

the respondent no.10, where photocopies of Registration Certificates of vehicles as well as Work order and Letter of Acceptance were annexed. The petitioner sought to argue thereafter that the RC Book was not uploaded, by seeking to confuse the court.

- 14.** It is submitted that the petitioners' document was also uploaded in the e-tender portal, as the petitioner was technically qualified. It is also seen from the documents-in-question that the process of registration of the respondent no.10 was duly completed and approved. Only in the column of RC Print/Smart Card, it was shown as 'not available'. The mere mention of such fact, it is argued, could not have altered the status of the petitioners' vehicles as duly registered.
- 15.** It is argued that there is no basis of the allegations of forgery regarding the RC Books of the respondent nos.9 and 10.
- 16.** A document is sought to be produced by the petitioner during arguments, in support of the submission that there were discrepancies in the RC Books/Smart Card of the vehicle. However, the said document neither contains any seal nor any signature of the transport authority. Not only has the IOCL denied the allegation of forgery but also the transport authority of Nagaland, which issued the relevant certificates. As such, it is argued that the writ petition ought to be dismissed.
- 17.** It is further argued that the judicial review sought to be invoked by the petitioner is not maintainable, since there is no public interest element involved.

- 18.** Heard learned counsel. The tender document indicates that the bid submission was to start from November 21, 2022 and end on November 30, 2022. One of the pre-qualification criteria stipulated in the bid document was that RC Book copy was to be submitted for Tank Truck. It was also provided that failure to meet the pre-qualification criteria would render the bid to be summarily rejected.
- 19.** Thus, there is no doubt on the requirements as per the tender document.
- 20.** The petitioner has relied on certain documents opted from the Vahan portal of the Government, where the documents pertaining to the present tender were uploaded. The said documents, insofar as those pertained to respondent nos.9 and 10, indicate that the RC Print/Smart Card status was shown to be 'not available'. It is submitted that the said situation prevailed till after the conclusion of the bid submission date.
- 21.** However, from the same document, it is also seen that, with regard to the application numbers of the respondent nos.9 and 10, the current status of the new registration of the vehicles of the said respondents were shown to be completed/approved on November 24, 2022. Again, the Certificates of Registration produced by respondent nos.9 and 10 indicate that the date of issuance of those was November 28, 2022, which is also prior to the conclusion of the bid submission period. The registration date, as indicated therein, is November 24, 2022 and the date when the copy thereof was issued was November 28, 2022.

- 22.** The petitioners also seek to rely on a document which is purportedly a “Tender Summary Report”. In the said document, as against the name of the respondent nos.9 and 10, the submission dates of the documents are shown to be November 29 and November 30, 2022 respectively. The authenticity of the said documents, at least *prima facie*, is also corroborated by a communication dated May 10, 2023 by the Regional Transport Officer, Kohima, Nagaland. In the said document, at the behest of the writ petitioner, the registration authorities had furnished certain documents with regard to respondent nos.9 and 10, where the date of alteration in RC as per Parivahan portal was shown to be November 29, 2022, and the date of print of altered RC as per Parivahan portal was shown to be ‘not available’ for one of the said respondents, and December 8, 2022 for the other.
- 23.** However, it has to be noted that the said dates relate to “alteration in RC” and not to the original Registration Certificates. Hence, the possibility cannot be ruled out of the said entries having been made in respect of subsequent alterations of the Registration Certificates on certain technical aspects, due to which such entries do not conclusively throw any light on the veracity or otherwise of the Registration Certificate on the date of issuance of the original.
- 24.** Mere non-availability of RC Print/Smart Card cannot be an indicator that the documents were actually not issued or were forged.
- 25.** That apart, the entries in the Vahan portal are maintained by the Government authorities. Neither the IOCL nor the respondent nos.9

and/or 10 is responsible for the same. As such, even if any discrepancy was seen in the documents obtained by the petitioner regarding the respondent nos.9 and 10 from the said portal, the same could not, per se, vitiate the acceptance of the bids of the said respondents as valid.

- 26.** What is to be seen is whether the respondent nos.9 and 10 uploaded genuine documents on the website of the IOCL, for the purpose of tender process and whether the IOCL independently verified the same to be correct.
- 27.** The relevant communications annexed at pages 35 and 37 of the affidavit-in-opposition of the IOCL speak for themselves. *Vide* the first communication dated April 4, 2023, the Transport Commissioner, Motor Vehicles Department, Government of Nagaland, sought a verification of the Registration Certificate at the behest of the IOCL, for re-verification of the authenticity of the allegation made by the petitioner. In reply, the RTO, Kohima, Nagaland, by his communication dated April 17, 2023 clearly responded that the copy of the 15 Registration Certificates received for verification were indeed registered in the Officer of the RTO, Kohima and found to be genuine.
- 28.** Hence, two crucial steps were passed by the respondent nos.9 and 10 with flying colours. First, the documents (Registration Certificates) submitted online by the respondent nos.9 and 10 were *prima facie* genuine. Secondly, on an independent enquiry, the IOCL subsequently was informed by the registering authority itself that those documents were genuine. Hence, there cannot be any further

question regarding the genuineness of the documents offered by the respondent nos.9 and 10, who are successful bidders.

- 29.** Insofar as the challenge of the petitioner is concerned, the same is also tainted by insufficient particulars of fraud/forgery having been furnished in the pleadings, following the principle of Order VI Rule 4 of the Code of Civil Procedure.
- 30.** No specific particulars as to how and when the forgery was committed, has been established by the petitioner.
- 31.** That apart, such an enquiry is beyond the scope of the writ jurisdiction, which has a short window of interference in judicial review.
- 32.** In the present case, nothing on record shows beyond doubt or even substantially that the respondent nos.9 and 10 committed any forgery or fraud in uploading invalid and/or manufactured documents and/or the IOCL acted without authority in accepting those.
- 33.** The IOCL, thus, did not commit any error in acting in terms of the tender document to accept the bids of the respondent nos.9 and 10.
- 34.** Hence, it cannot be said that the petitioners' allegation of fraud/forgery has been substantiated in any manner.
- 35.** Even taking into consideration the judgments cited by the parties, the scope of interference in judicial review is limited. Unless specifically pleaded and proved on every particular, there is no scope of fraud having been substantiated, for it to vitiate any action of the respondents.

- 36.** Hence, the judgments cited on fraud by the petitioner are not germane in the present context at all.
- 37.** Rather, it is well-settled that participants in a tender process, after becoming unsuccessful, ought not to be permitted to turn back and challenge the tender process.
- 38.** The petitioner, in the present case, participated fully in the tender process and after becoming unsuccessful, has challenged the documents furnished by the respondents as forged.
- 39.** Such act on the part of the petitioner appears to be inspired not by *bona fides* but as an afterthought, to gain an unfair advantage by creating a cloud on the success of the respondent nos.9 and 10 in the very tender process where the petitioners participated, but turned out to be unsuccessful. Such endeavour on the part of the writ petitioners ought to be deprecated.
- 40.** Accordingly, there is no scope of interference in the present writ petition. Hence, WPA No.4640 of 2023 is dismissed on contest, without any order as to costs.
- 41.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

**( Sabyasachi Bhattacharyya, J. )**