

18.05.2023
Ct. No.1
Item No.14
AN/RP

**MAT 826 of 2023
With
IA No.CAN 1 of 2023**

**Khan Bulk Carrier & Anr.
Vs.
M/s. Hindustan Petroleum Corporation Limited & Ors.**

Mr. Ashoke Kumar Gupta
Mr. Sailesh Kumar Gupta
Mr. Rathin Santra

... .. for the appellants

Mr. Biswanath Chatterjee
Mr. Soham Krishna Chatterjee
Mr. Sobhan Kumar Pathak

... .. for the respondents

1. This intra-Court appeal is directed against the order dated 3rd April, 2023 passed in WPA 25483 of 2022. The appellants filed the writ petition challenging the rejection of tender with respect to supply of tank trucks to the Hindustan Petroleum Corporation Limited (HPCL). The reason for rejection is on the ground that it is in violation of Clause 2(a) of the tender conditions. The appellants' case is that initially the respondent/HPCL alleged that the same tank trucks, which were offered by the appellants to participate in the tender, have been offered in another tender which has been

floated by HPCL. It is further submitted that subsequently HPCL took a different stand stating that one Sujan Road Lines had offered the same tank trucks for another tender, which, according to the appellants, is inconsistent stand and the appellants' tender ought not to have been rejected on that ground. The learned Single Bench having found that the same tank trucks cannot be offered for two tenders as it is in violation of Clause 2(a) of the tender notification dismissed the writ petition. Challenging the same the appellants are before us.

2. We have elaborately heard the learned advocates for the parties.
3. Learned advocate for the appellants has referred to the affidavit-in-opposition filed by HPCL in the writ petition, more particularly, the averments made in paragraph 9 thereof stating that the writ petitioners under the name and style "Sujan Road Lines" have participated in the tender for supply of tank trucks in respect of Mughalsarai tender and the same set of 14 tank trucks were also offered in respect of Mughalsarai tender, which is in clear violation

of Clause 3 of the tender conditions of Mughalsarai tender and Clause 2 of the tender conditions of DumDum ATF. Therefore, it is the case of the appellants that HPCL has been taking different stand at different point of time.

4. The first hurdle the appellants have to cross is with regard to maintainability of the writ petition. Admittedly, the appellants participated in the tender after accepting the tender conditions set down in the tender notification. The tender conditions provide for an arbitration clause in case dispute arises out of such notification. Therefore, the appellants are liable to be non suited on the ground that the writ petition is not maintainable. It is not for the writ Court to consider as to whether the owners of the said tank trucks had entered into an arrangement with the appellants as well as with another entity, namely, Sujan Road Lines and whether the appellants are in any manner connected with the said Sujan Road Lines and/or any of the partners of the appellants or owners of the tank trucks. It is further submitted that the appellants have not participated in the tender at Mughalsarai. These all are outside the realm of the writ

jurisdiction. Going by the Clause 2(a) of the tender conditions it is clear that a tenderer should offer separate set of tank trucks for each location i.e. if a tenderer proposes to apply for more than one location, separate set of tank trucks shall be offered at each location. If same tank trucks are offered for more than one location then contract will be terminated for all the locations. The learned writ Court on facts found that there is a clear violation of the said tender conditions. Furthermore, we note the submission of the learned advocate for HPCL that this modus adopted by the tenderer is to control the market. In any event, we are convinced that since the tender was in violation of the conditions stipulated in the tender notification, the writ Court rightly declined to grant any relief to the appellants. Therefore, we find no grounds to interfere with the order passed by the learned Single Bench and, accordingly, the appeal and the connected application are **dismissed**.

5. After we have dictated the above order, the learned advocate for the appellants submitted that in the event the appellants invoke the arbitration clause, the observations made by

the learned Single Bench and the observations made in this judgment should not affect the rights of the appellants.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)