

D/L. 18.
October 4, 2023.
MNS.

WPA No. 19421 of 2023

Chand Oil Carriers
Vs.
Indian Oil Corporation Limited and others

Mr. Soumya Majumder,
Mr. Manoj Malhotra,
Mr. Ravi Kumar Dubey

... for the petitioner.

Mr. Amit Kumar Nag,
Mr. Partha Banerjee

...for the IOCL.

1. Affidavit-of-service filed in Court today be kept on record.
2. The petitioner challenges an Expression of Interest issued by the respondent no. 1, that is, Indian Oil Corporation Limited (IOCL) dated August 5, 2023. The ground of such challenge, primarily, is that the said Expression of Interest is restrictive to the existing transporters in respect of a previous tender.
3. It is argued that such restriction shuts out fair and expansive competition among the prospective bidders. That apart, the initially successful bidders would be perpetuated

insofar as the grant of future contracts is concerned. It is argued that such approach on the part of a public authority like the IOCL is contrary to all settled norms of law governing public tenders.

4. Learned counsel, by placing reliance on the original tender floated sometime in November, 2022, submits that the specific number of tank trucks in respect of which such tender was 30 (thirty). Although it was indicated that the estimated tank trucks requirement is indicative and subject to change, it is argued that such change had to operate within the confines of the contracts granted to the successful bidders.
5. It is argued that the Expression of Interest tantamounts to a new tender, since specifications as to age/model of the tank trucks and the number of tank trucks required have been specified afresh. It is argued that the said Expression of Interest does not have any direct connection with the previous tender.
6. Learned counsel appearing for the IOCL submits that the present Expression of Interest is nothing but a continuation of the

Notice Inviting Tender (NIT) floated in November, 2022.

7. By placing reliance on the relevant provisions thereof, it is contended that the said tender envisaged work for a period of two years with an option for extension up to one more year. The present Expression of Interest, in fact, specifically refers to the particulars and the number of the said tender and confines the Expression of Interest to the successful bidders in respect of the said tender.
8. It is reiterated by learned counsel for the respondent authorities that the tank trucks required was not restricted to 30, but it was mentioned in the NIT itself that the estimated tank trucks requirement was merely indicative and subject to change.
9. It is contended by learned counsel for the respondent authorities that in terms of Clause 10 of the tender document, the estimated number of tank trucks shown in the tender notice is indicative and subject to change. IOCL reserves the right to contract additional tank trucks. It is, thus, argued that the present challenge is frivolous.

10. In addition, learned counsel for the IOCL contends that in a similar previous tender, the present petitioner had turned out successful and work order was issued to the petitioner. The said tender also carried an equivalent clause as Clause 10 in the present one. In pursuance thereof, a work order was awarded to the petitioner, annexed at page 21 of the writ petition. Hence, the petitioner is well aware of the exact connotation of the impugned Expression of Interest. That apart, it is argued that the matter pertains to a policy decision of the IOCL, which ought not to be interfered with readily at the behest of one of the bidders.

11. A perusal of the parent tender floated in November, 2022 clearly establishes the arguments of the respondents. Its specific e-tender number is PT No. RCC/ERO/37/2022-23/PT- 120. In the impugned Expression of Interest, the respondents have specifically referred to the said tender number. The declared Expression of Interest was for induction of tank trucks with capacity of 16 MT and above up to 25 MT for Black Oil transportation contract ex Haldia Refinery

Terminal for POL transportation. The said specifications tally exactly with the parent tender referred to above.

12. In fact, it is specifically mentioned in the Expression of Interest that the IOCL invites the Expression of Interest from the interested “existing transporters” in a tender number, which number is the same as the parent tender, for provision of ready-built tank trucks.

13. It is seen from Clause 10 of the parent tender that, indeed, the same contained the provision that the estimated number of tank trucks shown therein were indicative and subject to change and that the IOCL reserves the right to contract additional tank trucks. In terms of the said tender, the IOCL had full liberty to grant further work orders in respect of recruitment of additional tank trucks, however, for the period as stipulated in the parent contract, that is, for two-years with option of extension up to one more year.

14. The impugned Expression of Interest was published on August 5, 2023, which is well within the said outer limit of the contract period.

15. Thus, the present Expression of Interest falls squarely within the purview of the parent tender and the specifications as stipulated in the said Expression of Interest tally exactly with those of the parent NIT.

16. Having been floated within the aegis and contemplation of the parent tender, the Expression of Interest impugned herein cannot be said to be an independent subsequent tender. Hence, no question of perpetuation arises. Competition is not curtailed in any manner, since the restriction complained of by the petitioner was well within the ambit of the original tender which is itself for a period of two years with option of extension up to one more year.

17. In any event, IOCL is justified in arguing that the petitioner is well aware of the said policy of the respondents since similar additional work orders were placed in favour of the petitioner in connection with a prior tender.

18. In view of the above discussions, there is no scope of interference with the impugned Expression of Interest.

19. Accordingly, WPA No. 19421 of 2023 is dismissed on contest.

20. There will be no order as to costs.

21. Urgent photostat certified copies of this order,
if applied for, be made available to the parties
upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)