

AD-16
Ct No.09
23.11.2023
TN

WPA No. 19818 of 2023

Vishal Kumar
Vs.
Indian Oil Corporation Ltd. and others

Mr. Syed Ehtesham Huda,
Mr. Brijesh Kumar Singh,
Mr. Om Prakash Prasad,
Mr. Sk. Aptabuddin

.... for the petitioner

Mr. Amit Kr. Nag,
Mr. Partha Banerjee

.... for the respondent nos.1 to 8

- 1.** The petitioner participated in a tender floated by the Indian Oil Corporation Ltd. (IOCL) in the year 2022 where the requirement of Tank Trucks shown in the tender document was 30.
- 2.** Learned counsel for the petitioner contends that the previous similar tender contemplated a requirement of 60 Tank Trucks (TTs).
- 3.** It is argued that taken in proper perspective, the present requirement should have been more. It is argued that as per both the tender documents of 2018 and 2022 respectively, the percentage reserved for SC/ST/MSE was 7 ½ per cent which comes to 5 TTs if the total number is 60 and to 2 TTs if the total number is taken to be 30. Seen

from such perspective, the petitioner's trucks ought to have been issued work orders, it is argued.

4. The primary challenge, however, preferred in the writ petition is to the document dated August 05, 2023 annexed at page-144 in the writ petition, which is depicted as an "Expression of Interest". Learned counsel for the petitioner challenges the very basis of such expression of interest since the same, it is argued, contemplates further trucks being absorbed from the interested "existing" transporters. It is submitted that the said expression of interest was *de hors* the contemplation of the tender of 2022 itself and ought to be struck down, as the invitation therein could not have been restricted to existing transporters who have already supplied TTs but should also have encompassed other bidders. Alternatively, it is argued, the tender itself ought to be reopened from the technical stage.
5. Learned counsel for the respondent-IOCL places reliance on an unreported judgment dated October 04, 2023 passed in WPA No. 19421 of 2023 where another bidder in connection with the same tender had challenged the self-same expression of interest as the present one, which

had been turned down on the ratio laid down therein.

6. It is submitted by placing reliance on Clause 10 of the tender terms and conditions, which are part of the tender document, that the estimated number of Tank Trucks shown in the tender notice is indicative and is subject to change. IOCL, it was mentioned, reserves the right to contract additional Tank Trucks.
7. Learned counsel submits that the financial bid was declared as long back as on February 01, 2023, which is evident from the annexures to the writ petition but the present challenge was preferred on or about August 14, 2023 only after issuance of the impugned expression of interest. It is further argued that in terms of the expression of interest, further TTs have been granted work orders on September 30, 2023.
8. It is not disputed between the parties that out of the said persons who were issued work orders, there were at least five SC candidates.
9. The plinth of the arguments of the petitioner pertains to the expression of interest dated August 05, 2023.
10. The issue was settled in the cited judgment where it was observed, *inter alia*, that Clause 10

of the terms and conditions contained the provision that the estimated number of Tank Trucks shown therein were indicative and subject to change and that the IOCL reserved the right to contract additional Tank Trucks. It was observed that 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. The same time period, it must be mentioned, has been adhered to in the present case as well.

- 11.** The impugned expression of interest, as held in the earlier judgment, was published on August 05, 2023 which is within the stipulated outer limit of the contract period. Thus, the expression of interest falls within the purview of the parent tender and its provisions and the specification stipulated in the expression of interest tally exactly with those of the parent NIT.
- 12.** Hence, the arguments advanced by the petitioner with regard to the expression of interest dated August 05, 2023 cannot be accepted, since the same was utterly within the contemplation of the parent tender document.

- 13.** In fact, the expression of interest impugned herein was not a fresh tender to interdict with the operation of the previous NIT of 2022 but a continuation of the same and, as such, there was no irregularity in issuing the same within the conspectus of the NIT.
- 14.** As regards the challenge to the number of TTs carried forward, the petitioner having participated in the tender of 2022 and having succeeded in the technical stage, cannot be permitted to resile from such position and challenge the number of Trucks carried forward. In fact, the present challenge has been preferred long after the publication of the financial bid on February 01, 2023, only after the expression of interest was issued on August 05, 2023. Hence, such delay on the part of the petitioner cannot be entertained.
- 15.** Having participated in the tender and having succeeded in the initial stages, merely because the petitioner is apparently affected by the expression of interest issued subsequently within the periphery of the original contract, the petitioner cannot be allowed to take such a chance at a belated stage. The petitioner, while participating in the present contract, was fully

aware of the number of Tank Truck requirement and that the estimated Tank Trucks requirement was indicative and subject to change and was also aware of the tender terms and conditions including Clause 10 as indicated above. The numbers concerned were well within the knowledge of the petitioner but the petitioner chose, still then, to participate in the tender.

- 16.** Hence, the argument as to the nitty-gritties of the numbers of Tank Trucks which were required to be carried forward does not now lie in the mouth of the petitioner insofar as the present challenge is concerned.
- 17.** In such view of the matter, there is no scope of interference in the writ petition.
- 18.** Accordingly, WPA No. 19818 of 2023 is dismissed on contest, without any order as to costs.
- 19.** 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.)