

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

FMA 1266 of 2022

with

CAN 1 of 2022

with

CAN 2 of 2022

with

CAN 3 of 2022

(Through Video Conference)

Reserved on : 19.12.2022

Pronounced on: 06.02.2023

B.B. Transport and Ors.

...Appellants

-Vs-

Sandip Kuila & Ors.

...Respondents

Present:-

Mr. Kumar Jyoti Tewari,
Mr. Prantick Ghosh,
Mr. Aniruddha Tewari, Advocates

... for the Appellants

Mr. Kishore Datta, Senior Advocate
Ms. Sumita Shaw,
Mr. Nilendu Bhattacharya,
Mr. Soumen Chatterjee, Advocates

..... for the Respondent No. 1.

Mr. Amit Kumar Nag,
Mr. Partha Banerjee, Advocates

.....for IOCL

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. By this appeal, the correctness of the order of the learned Single Judge dated 28.07.2022 passed in W.P.A. No 14420 of 2022 (B.B Transport and others -versus- Sandip Kuila and others) has been questioned by the appellant/respondent.
2. The facts of the case are that the respondent herein the appellant No. 2 Indian Oil Corporation Limited (hereinafter referred to as IOCL) in 2021 floated digitally signed e-tender bearing No. RCC/ERO/37/2021-22/PPT/173 and e-tender No. ID: 2021_ERO_145409_1 for transportation of Indane LPG cylinders on unit rate basis from Haldia, LPG Bottling Plant to other parts of the state and invited bids from companies, partnership/proprietorship firms, co-operative societies etc. who met the minimum pre-qualification criteria (PQC) for award of contract. IOCL in the said notice inviting tenders (NIT) also made an assessment for the number of trucks (approximately) required for the transportation of LPG Cylinders.
3. The bidders offering proposed trucks as PQC needed to upload self-attested copies of RC Books or invoice and temporary registration certificates for new trucks offered (owned or attached) as well as age of quoted trucks. Failing to meet the PQC would result the bid to be summarily rejected by respondent No. 2. As per clause 9 of the General Instructions to Bidders, IOCL reserved the right to verify the originals of the submitted document at any stage of the tender in case of doubt and ambiguity. It was mandatory for the bidders to fill the details of ownership of trucks, age of truck, RTO Registration as per Annexure II and Annexure II D of the Technical Bid and an Undertaking on the acceptance of tender terms and conditions as per Annexure-B in the relevant worksheet of excel file. The age of the quoted truck according to Clause V (A)(d) of the notice inviting tender, shall not exceed the limit specified in the NIT as on the closing date of tender submission reckoned from the month and year of manufacturing as mentioned in the RC Book. In case only the year of manufacturing is mentioned in the RTO Registration, the age of the quoted truck should be

reckoned from 1st January of the year of manufacturing. When both month and year of manufacturing is mentioned in the RTO Registration, age is to be reckoned from 1st day of the month of manufacturing. In case manufacturing month and year is not entered in the RC Book, the bidders have to submit copy of original invoice to establish the date of manufacturing of truck. If the original invoice is not available, then the month and year of manufacturing will be established from the copy of Certificate issued by manufacturers. The relevant quoted truck will be rejected when manufacturing date cannot be established from any of the documents. Clause 14 of the Tender Schedule required that the maximum age of any quoted truck, as reckoned from the month and year of manufacturing in the RTO Registration should not exceed 14 years on the closing date of the tender. The truck bearing a month and year latest in point of time in comparison to the other contender trucks offered by the bidders was preferred for selection.

4. The writ petitioner herein the respondent No. 1 in the appeal submitted his bid under the general category in response to the notice inviting tender. By electronic mail from the Tender Inviting Authority on June 30, 2022 it was informed that the bid regarding the subject tender was rejected by IOCL through the Constituted Committee. On enquiry, respondent No. 1 came to know that the authorities computed the age of the quoted trucks by fixing the date of manufacturing of each truck as January 1, 2022 instead of January 18, 2022 as informed by the manufacturer to the writ petitioner. The appellant No. 1, B.B. Transport was issued the award of contract dated June 30, 2022, followed by letter of acceptance on July 02, 2022 by IOCL. The writ petitioner filed a writ petition wherein the Learned Single Judge was pleased to pass an order in favour of the writ petitioner. Thus, being aggrieved by the impugned order passed by the Learned Single Judge the instant appeal has been filed by the appellant/B.B. Transport.

5. Submissions of the learned counsel for the appellant are that clause V(A)(d) of the tender condition was misread and misunderstood in the impugned order by the Learned Single Judge. IOCL herein respondent No.2 in the appeal

had varied the tender condition contained therein by approaching three manufacturers of trucks for ascertaining the date of manufacture of the trucks offered. This action of IOCL is beyond the scope of judicial review in tender matter. Moreover the IOCL being the State has rightly exercised its executive power approaching the manufacturers of trucks invoking Clause 9 of the general instruction. As the concerned tender had been floated for transportation of the LPG cylinder which is an essential service as envisaged under section 41(ha) of the Specific Relief Act, 1963. Thus, the well-reasoned order passed by the author of the tender shall not have been interfered with in the impugned order.

6. It has been further submitted by the appellant that the learned Single Judge has erred in law by setting aside the entire tender and further giving liberty of calling for fresh tender without understanding the facts that the writ petitioner being an unsuccessful candidate in the general category, had challenged, inter alia the award of contract issued in favour of appellant Nos.1 and 2 who participated in the tender as reserved category bidders. Moreover, there stands no scope for interpretation of tender document by way of judicial review unless the terms contained in the tender violates the standard norms provided under the Constitution. However in the present case the Learned Single Judge has acted beyond his jurisdiction not vested to him by law.

7. It has been submitted by the learned counsel for the writ petitioner that the appellant No.2 (IOCL) failed to adhere to the tender conditions as well as the provisions of the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989. Moreover, IOCL has been unable to apply the tender conditions uniformly for all the bidders. It has tailor-made the tender conditions by selectively interpreting it in order to detriment the writ petitioner.

8. Having heard the counsel for parties and on perusal of records, this Court is of the view that the learned Single Judge was correct in directing IOCL to cancel the communication made to the petitioner by mail dated 30.06.2022, rejected the bid of B.B. Transport being the respondent No.2 and set aside all steps taken by the tendering authority (IOCL) pursuant thereto. Supreme Court

in Poddar Steel Corporation v. Ganesh Engineering Works and others reported in (1991) 3 SCC 273 held that the requirements in a tender notice can be classified in two categories-those which lay down the essential conditions of eligibility, i.e., the authority issuing the tender maybe required to enforce them rigidly and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition i.e., it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition. In the present case, the dispute relates to Clause V(A)(d) (conditions governing the offers of truck) of the notice inviting e-tender. The yardstick hence mentioned in the above clause is the age of the truck; i.e., the younger the truck the higher the eligibility for its selection and all other conditions shall be considered as subsidiary. Thus, the truck bearing a month and year which is the latest in point in comparison to the other contender truck offered by the bidders shall be preferred for selection. However, the tendering authority (IOCL) varied the conditions to the detriment of the writ petitioner/ respondent No.1 thereby not awarding him the award of contract.

9. It is also worth noting that this being an intra-court appeal, once the view taken by the Learned Single Judge is found to be possible and proper view, then no case for interference is made out.

10. For the foregoing reasons, the appeal is devoid of any merits and is accordingly dismissed. All pending applications are also accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
06.02.2023
PA(BS)