

31-08-2023
ct no. 13
sl. no. 6
sp

M.A.T. No. 1646 of 2023
With
IA No. CAN 1 of 2023

Indian Oil Corporation Limited & Ors.
-Versus-
Indane LPG Distributors' Association, West Bengal

Mr. Jaydip Kar, Sr. Advocate
Mr. Amit Kr. Nag,
Mr. Partha Banerjee

...for the appellants

Mr. Kalyan Bandyopadhyay, Sr. Adv.
Mr. Niladri Bhattacharjee,
Mr. Sirsanya Bandopadhyay,
Mr. Soham Bandopadhyay,
Ms. Deblina Chattaraj,
Mr. Aditya Chaturvedi,
Ms. Angana Dutta

...for the respondent

1. The instant appeal is directed against an interim order dated July 18, 2023 passed in WPA 16797 of 2023 by a Single Bench of this Court.
2. The subject matter of the writ petition and this appeal is a Notice Inviting Expression of Interest (NIEOI) dated 21st June 2023 floated by the Indian Oil Corporation to ascertain the number of vehicles available from the existing distributors of the Indian Oil Corporation, for lifting gas laden cylinders from the bottling plant of IOCL to the distributors' godown.
3. A proposed comprehensive formal tender for engaging vehicles is also enclosed along with the

EOI. The IOCL has clearly submitted before this Court that the tender has not yet been floated.

4. The NIEOI has been undertaken to enable the IOCL to know the likely number of vehicles that may be required from independent transporters (other than from distributors) and the economics involved therefor.
5. The proposed tender terms produced before the learned Single Bench and this Court did not contain i.e. the base price, i.e., the cost for transporting per cylinder. Serious grievance has been raised by the writ petitioners/respondents in that regard.
6. It is submitted by Mr. Kalyan Bandyopadhyay, learned Senior Counsel for the respondent that by reason of not stipulating the base price and in view of the binding nature of Clauses 9, 10 and 11 of the notice inviting EOI dated June 21, 2023, the existing distributors have been put in an weaker bargaining position.
7. They would be bound, in the proposed tender process by the number of trucks quoted by them against the EOI, and be penalised if they do not offer such trucks at the base price to be fixed by the IOCL. The grievances of the writ petitioners/respondents may not be completely baseless. It may equally be viewed as a

business disadvantage which may by itself not be justiciable.

8. According to the respondents the reference to a L-1 rate a reading of Clauses 9, 10 and 11 of the aforesaid NIEOI, leaves the distributors with a “Hobson’s choice”. If they participate in the EOI process they would be bound by the number of trucks they can offer to deploy against the proposed tender process. On the other hand, if they do not participate in the EOI they would be bound by the base price fixed by the IOCL and would have offer their vehicles in the forth coming tender process, at such fixed base price. These are again matters in the realm of business or commercial decisions that both IOCL and the distributors have to make.
9. The aforesaid factors are required to be addressed by the Writ Court.
10. This Court finds that the impugned order could have disclosed an appropriate discussion or sufficient reasons for staying of the EOI as a whole at an interim stage in a writ petition. Any order of a court must be informed with sufficient reasons.
11. This Court is of the view that the writ petition may be heard on its merits and the process of expression of interest shall go on subject

however to the result of the writ petition. The interim order is only modified to this effect.

12. The IOCL has been rather recalcitrant as they have not filed an affidavit in opposition within the time stipulated by the Court below. The appeal has been mentioned on urgency that the interim order continues upto today.
13. Across the bar, Mr. Jaydip Kar, learned Senior Counsel appearing for the appellants submits that his clients shall serve a copy of the affidavit in opposition to the writ petitioners/respondents in course of the day.
14. The respondents may choose to file any reply if they so please or directly mention the matter before the learned Single Bench for early and expeditious hearing.
15. It is made absolutely clear that the observations made hereinabove, are prima facie tentative and only for the limited purpose of consideration of the propriety of the interim order passed. The same shall not be conclusive or binding or treated as such by the learned Single Bench.
16. With the aforesaid directions, M.A.T. 1646 of 2023 shall stand disposed of.
17. There shall be no order as to costs.

18. In view of the above, CAN 1 of 2023 shall also stand disposed of.
19. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)