

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 24259 of 2022

M/s. Moumita Logistics & Anr.

vs.

Hindustan Petroleum Corporation Ltd. & Ors.

with

W.P.A 24265 of 2022

Ajit Kumar Murmu

vs.

Hindustan Petroleum Corporation Ltd. & Ors.

For the petitioners	:	Mr. Debabrata Saha Roy Adv. Mr. Subhankar Das, Adv. Mr. Neil Basu, Adv. Mr. Sankha Biswas, Adv.
For the respondent nos. 1 to 6	:	Mr. Biswanath Chatterjee, Adv. Mr. Sobhan Kumar Pathak, Adv.
Last Heard on	:	24.02.2023.
Delivered on	:	02.03.2023.

Moushumi Bhattacharya, J.

1. The petitioner participated in a tender floated by the respondent nos. 1 - 6, Hindustan Petroleum Corporation Limited for transportation of bulk products including branded fuels by road for Mughalsarai. The petitioner is aggrieved by the rejection of its bid by a document dated 13.10.2022 wherein the reason given for the impugned rejection is that the petitioner had violated a Clause in the Tender Notice and has offered the same Tank Trucks (TTs) at more than one location. The petitioner accordingly seeks quashing of the rejection and a restraint on the respondent from finalising a second tender for Haldia dated 25.4.2022. The undisputed facts, as evident from the material before the Court and submitted by the learned counsel on behalf of the parties, are as follows.

2. HPCL floated a second Tender for transportation of similar goods for Haldia on 25.4.2022. This Tender also contained a clause identical to the one in the Mughalsarai Tender. The relevant clause is set out later in the judgment.

3. The petitioner's case is that the petitioner offered 10 TTs for the Mughalsarai Tender and 5 TTs for the Haldia Tender. Learned counsel appearing for the petitioner submits that of the 10 TTs offered for Mughalsarai, 4 TTs were offered by the petitioner in the Haldia Tender. Counsel submits that the petitioner in any event offered 5 TTs in excess of the required number for the Mughalsarai Tender and 4 TTs in excess for the Haldia Tender. According to counsel, the petitioner waited till the last date of submission in the Haldia Tender so as to know the fate of its bid in the

Mughalsarai Tender and was constrained to refuse taking any further steps for the Mughalsarai Tender due to the delay. The petitioner was thereafter intimated that the petitioner's bid for the Haldia Tender had been rejected in the technical evaluation. This was communicated to the petitioner on 15.11.2022. Counsel further submits that the petitioner was compelled to keep his TTs idle for an indefinite period since the petitioner was not informed of his status in the Mughalsarai Tender. It is submitted that HPCL should have treated the four common TTs offered for the Mughalsarai and Haldia Tenders as additional TTs since the petitioner had offered TTs in excess of the requirement in both the Tenders.

4. Learned counsel appearing for the HPCL relies on Clauses 3 and 2 of the Mughalsarai and Haldia Tenders respectively and submits that the petitioner had offered the same TTs in both the Tenders but under the names of different entities. Counsel relies on several documents in the affidavit-in-opposition to substantiate this point. Counsel submits that the petitioner had not shown any interest in participating in the Mughalsarai Tender. Counsel submits that offering the said Tank Trucks in the name of two different entities was in clear violation of Clauses 3 and 2 of the Mughalsarai and Haldia Tenders.

5. The controversy in the present matter arises out of Clause 3 of the Mughalsarai Tender floated by HPCL on 13.1.2022. The Clause is reproduced below for ease of reference:

“Tenderer should offer separate tank trucks for each location i.e. if the tenderer proposes to apply for more than one location, separate set of tank

trucks shall be offered at each location. Same tank trucks (tender) offered for more than one location contract will be terminated for all the locations.”

“In case it is observed that, all the tenderers or a group of tenderers have quoted in cartel, HPCL reserves the right to reject some or all the bids of the tenderers who have quoted in cartel”

The Clause makes it clear that the tenderer should offer separate sets of tank trucks for each location if the tenderer proposes to apply for more than one location. The Clause provides in unequivocal terms that the offer shall be terminated for all the locations if a tenderer offers the same tank trucks for more than one location.

6. A document enclosed in the affidavit of HPCL shows that four TTs were offered in the name of the petitioner being the proprietor of M/s. Ghosh Oil Movers for the Mughalsarai Tender and in the name of M/s. Maa Oil Movers in respect of the Haldia Tender. There is little doubt that the four TTs offered by the petitioner for the Mughalsarai Tender were the same four TTs which were offered in the Haldia Tender which would be evident from the registration numbers of these four TTs. HPCL hence, questioned the same by way of an (undated) letter which is part of the writ petition. The petitioner has not been able to answer the contention with regard to the commonality of the four TTs offered in both the Tenders. The petitioner's contention that the petitioner had offered TTs in excess of the required number in both the Tenders is not a satisfactory explanation to get around the requirement of Clause 3 of the Mughalsarai Tender which is similar to Clause 2 of the Haldia Tender.

7. The document enclosed with the opposition shows that the petitioner operated in the name of Maa Oil Movers and Ghosh Oil Movers in both the Tenders but offered the same four TTs under these two different names. Hence, the petitioner violated Clause 3 of the Mughalsarai Tender and Clause 2 of the Haldia Tender whereby HPCL was entitled to terminate the bid for all locations.

8. The document produced by the respondent shows that the petitioner offered the same Tank Trucks for both the Tenders/locations. This has not been disputed on behalf of the petitioners. Hence, the reason given in the impugned rejection cannot held to be faulted as being arbitrary or unreasonable or of a nature which would warrant the interference of the Writ Court. The condition in Clauses 3/2 of the Tenders is clear and any other interpretation would amount to unnecessary interference in the tender.

9. Moreover, the Tender conditions also contain a clear embargo on tenderers operating as a cartel. The petitioner has also violated this term by trying to create a monopoly in the number of vehicles offered for emerging as the successful bidder. Since the petitioner has clearly violated a mandatory clause in the Tender documents which prohibited the tenderer from offering the same Tank Trucks for each location or the same set of TTs for more than one location, the respondent was entitled to reject the bid of the petitioner. The petitioner's conduct amounts to creating a cartel for securing the tender by offering a large number of Tank Trucks. The petitioner has admittedly tried to obtain the Tender by offering more than the required number of

Tank Trucks but in essence offered the same Tank Trucks in both the Tenders. This is a clear instance of cartelisation which is contrary to fair and transparent practices.

10. This Court has also not found any arbitrariness on the part of HPCL in rejecting the petitioner's bid or any *mala fides* in applying the tender conditions to the petitioner. HPCL has proceeded in terms of the Tender and rejected the petitioner on that basis. Moreover, the petitioners chose not to deposit the security money for executing the agreement for the Mughalsarai tender; reinforcing the fact of there being no arbitrary action on the part of the respondent. There is hence no ground to grant the reliefs prayed for.

11. This Court had passed an order dated 23.11.2022 in WPA 24254 of 2022 (Ghosh Oil Movers & Anr. vs. Hindustan Petroleum Corporation) by which the rejection of the petitioner's bid in that matter was quashed. The order was primarily passed on the balance of convenience aspect of the matter and before affidavits. Since the identity of the tank trucks offered by the petitioners was not placed before the Court at the relevant point of time, the Court had no evidence before it to appreciate the violation of the relevant tender terms. In any event, the respondent has sought for a review of the order which is pending before the Court. Hence, this order does not assist the petitioner in the present case.

12. The Supreme Court in a recent decision delivered on 31.1.2022 in *Agmatel India Private Limited vs. Resoursys Telecom; (2022) 5 SCC 362* held against the interpretation of tender terms by the courts on the ground that the author of the tender document is the best person to understand its

requirement. *Agmatel* relied on *Galaxy Transport Agencies vs. New J. K. Roadways, Fleet Owners & Transport Contractors*; 2021 (16) SCC 808 where the Supreme Court cautioned against interference in tender matters by the court giving its own interpretation of the notice inviting tenders. In *N.G. Projects Limited vs. Vinod Kumar Jain*; (2022) 6 SCC 127, the Supreme Court expressed a similar opinion in that courts should be reluctant to interfere in tender matters involving technical issues as they may not have expertise to adjudicate upon such issues.

13. The above decisions are in favour of the respondent and further persuade this Court not to interfere with the impugned decision.

14. WPA 24265 of 2022 is accordingly dismissed without any order as to costs.

WPA 24259 of 2022

15. The facts in this writ petition are identical to WPA 24265 of 2022. The reason given for rejection is also similar to the writ petition which has been adjudicated above namely that there is no provision in the Tenders for offering the same tank trucks by the tenderers and the petitioners' bid was rejected for that reason. Learned counsel appearing for the parties have also proceeded on the basis that the two matters are similar. Hence, there is no material disclosed in the present writ petition to persuade the Court to come to a different view. WPA 24259 of 2022 is accordingly dismissed for the reasons as stated in WPA 24265 of 2022 without any order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)