



W.A.Nos.1728 and 1729 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 08.03.2023

Judgment Pronounced on : **30.03.2023**

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.Nos.1728 and 1729 of 2022
and C.M.P.Nos.12431, 12438 and 12436 of 2022 & 1709 and 1719 of 2023

In W.A.No.1728 of 2022 :

1. The General Manager (Contracts Cell),
India Oil Corporation Ltd.,
Tamil Nadu State Office,
No.139, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 034.
 2. The Deputy General Manager (Contracts Cell),
India Oil Corporation Ltd.,
Tamil Nadu State Office,
No.139, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 034.
- ... Appellants

Versus

Jyothi Constructions,
Rep. by its Managing Partner V.Surya

... Respondents

In W.A.No.1729 of 2022 :

1. The General Manager (Contracts Cell),
India Oil Corporation Ltd.,



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Tamil Nadu State Office,
No.139, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 034.

2. The Deputy General Manager (Contracts Cell),
India Oil Corporation Ltd.,
Tamil Nadu State Office,
No.139, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 034.

... Appellants

Versus

1. AMG Vijaykumar
2. Minupriya
3. S.Lakshmanan
4. S.Joseph Raj Thomas
5. P.Pugalendhi
6. Alagesh Kanna

... Respondents

(Impleaded the respondents 2 to 6, vide order of Court
dated 08.03.2023 made in C.M.P.No.1910, 1911, 1912,
1916 and 1917 of 2023 in W.A.No.1729 of 2022)

Prayer in W.A.No.1728 of 2022 : Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 29.06.2022 in W.P.No.14906 of 2022.

Prayer in W.A.No.1729 of 2022 : Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 29.06.2022 in W.P.No.14901 of 2022.

For Appellant : Mr.M.S.Krishnan, Senior Counsel
(in both the Writ Appeals) for Mr.Mohammed Fayaz Ali

For Respondents : Mr.N.Vijay Narayan, Senior Counsel



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(in both the Writ Appeals) Assisted by Mr.P.Solomon Francis

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COMMON JUDGMENT

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D.BHARATHA CHAKRAVARTHY, J.

A. The brief facts leading to filing of the appeals :

On 22.01.2022, *vide* tender bearing No.SRCC/PT/179/TNS0/2021-22, the appellant namely, *Indian Oil Corporation Limited*, invited/published a tender for road transportation of bulk petroleum products through top loading Tank Trucks. The tender was for a total number of 148 Tank Trucks with a capacity of 12-16 kilolitres and 21 Tank Trucks with a capacity of 18-30 kilolitres. As per the tender, the pre-bid meeting was to be held on 02.02.2022 and the closing date for submission of the tenders was on 16.02.2022. The respondents in both the Writ Appeals namely, *Jyothi Constructions*, represented by its Managing Partner *V.Surya* as well as *A.M.G.Vijaykumar* submitted their applications. Clause 1.10(b) reads as follows:-

"1.10 Submission of Tender (Technical Bids) :

a)....

b) The tenderers are advised to carefully go through the following and comply:

- i. Terms and Conditions of the tender document.***
- ii. Bulk Petroleum Road Transportation agreement.***



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iii. Instructions for tenderers participating in e-tenders."

1.1. Similarly, Entry No.16 of the list of documents required for technical evaluation mentioned in page No.23 of the application requires uploading of the following documents:-

Sr.	Description of Document	Requirement	Submitted / Not Submitted
Please put ? for YES and X for NO in the box			
.			
.			
.			
.			
16	Details of relationship with Directors of IOCL - Part A,B& C and Declaration 'I', 'II' and 'III' (Attachment-11).	On Letter Head (scanned copy)	

1.2. Along with the tender terms and conditions, a copy of the standard agreement is also furnished and the Declaration-I which is contained in page No.60 of the application is extracted as follows:-

"DECLARATION 'I'

We declare that we have complied with and have not violated any clause of the standard Agreement.

Date: *Signature* _____



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Name of Person signing_____

Tenderer's Name and
address with seal_____ "

1.3. Both the respondents submitted their applications, but, however, there were some defects in their applications. By separate letters, dated 02.05.2022, they were directed to comply with the shortcomings in their applications. In the communication, it was specifically mentioned that as bidders have submitted incomplete details of relationship with Directors of IOCL - Part A, B and C and Declarations-I, II and III (attachment-11), it was specifically requested the bidders to submit Declarations-I, II and III part of attachment-11 duly signed and striking off option not applicable in Declaration-II. The queries made in W.A.Nos.1728 and 1729 of 2022 are extracted as hereunder:-

In W.A.No.1728 of 2022 :

" 1. Bidder has submitted incomplete Details of relationship with Directors of IOCL - Part A,B & C and Declaration 'I', 'II' and 'III' (attachment-11). Bidder to submit Declaration 'I', 'II' and 'III' part of attachment-11 duly signed and striking off option not applicable in declaration-II.

2. Bidder to resubmit Integrity pact signed by all partners of the firm."



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In W.A.No.1729 of 2022 :

" 1. Bidder has not submitted Declaration 'I', 'II' and 'III' which is part of Details of relationship with Directors of IOCL - Part A,B & C and Declaration 'I', 'II' and 'III' (attachment-11). Bidder to submit Declaration 'I', 'II' and 'III' (page 60-61 of tender) duly signed by authorised signatory."

1.4. Thereafter, while complying with the other directions, the respondents struck off the Declaration-I as not applicable to them. Therefore, by two separate, but, identical orders, dated 08.06.2022, the technical bids of the respondents were rejected. The relevant portion of the order reads thus:-

" You are informed that your bid for the above tender has been rejected during Technical evaluation by the duly constituted committee for the reason Bidder has struck off Declaration-I stating NA in the attachment-11. The submitted declaration is invalid."

1.5. Contending that they initially filled up the declaration, but, the consultant of the petitioners had inadvertently struck off the declaration at the time of uploading and that by itself should not make the bids invalid and pleading that they have invested several crores of rupees purchasing brand new Trucks and that their bids have been rejected for flimsy reasons, the



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respondents filed W.P.Nos.14901 and 14906 of 2022 challenging the orders of rejection of their technical bids.

B. The case of the appellants in Writ Petitions :

2. Though the appellants did not file counter-affidavit, they contested both the Writ Petitions on the ground that the bids could have been rejected at the outset itself. The tenderers ought to have gone through tender documents carefully and when the declaration is sought only to ensure compliance of the standard agreement, they ought not to have scored off the declaration, but, ought to have filled up the same. In spite of granting an opportunity, they committed the above mistake and therefore, the authorities scrutinising the tenders have to go strictly by the tender conditions and irrespective of the nature of mistake or equitable considerations, when the respondents have committed mistakes while submitting the applications for tenders, their bids have been duly rejected. There is absolutely no motive or malafide intention for the appellants to single out the respondents alone. As a matter of fact, there were totally 58 tenderers and only 5 of them had not given Declaration-II as stated *supra*. Therefore, when the Tender Floating



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Authority has acted in accordance with law, the Writ Petitions are liable to be dismissed.

2.1. The learned Single Judge took into account the very declaration which was required and since it mandates the respondents to declare that they have complied with and have not violated any clause of the standard agreement, concluded that on a reading of true and correct meaning, the respondents have correctly made an endorsement that the declaration is not applicable. Since the learned Single Judge reasoned that such a declaration, if at all relevant, can come into play only after the execution of the contract, held that the bids were wrongly rejected. The learned Single Judge further held that the very purpose of floating a tender is to attract best prices and rejection of bids on such hyper-technical reasons not only causes injustice to the individuals, but, public interest also suffers. Therefore, finding strong reasons to interfere by way of Writ Petitions under Article 226 of the Constitution of India, the learned Single Judge concluded that the decision of the appellants suffers from arbitrariness and irrationality and directed that the technical bids of the petitioners shall also to be accepted for evaluation



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of merits in accordance with law. Aggrieved by the same, these intra-court appeals are filed before this Court.

C. The Submissions :

3. Heard *Mr.M.S.Krishnan*, learned Senior Counsel appearing on behalf of the appellants and *Mr.N.Vijay Narayan*, learned Senior Counsel appearing on behalf of the respondents in both the Writ Appeals.

3.1. *Mr.M.S.Krishnan*, learned Senior Counsel for the appellants, taking this Court through the various clauses of the tender application, would submit that the application clearly makes it mandatory that the declaration should be signed and uploaded. As a matter of fact, the writ petitioners admitted their mistake in their pleadings. Once the mistake is admitted, howsoever trivial it would be, irrespective of the nature of the mistake, the Tendering Authority is entitled to reject the technical bid. Without advertng to the pleadings of the parties, the learned Single Judge understood the declaration differently and had, as a matter of fact, re-written the contract in the process by holding that such a declaration should be executed and uploaded after the execution of the agreement which are not the terms of the contract. Such powers are beyond the writ jurisdiction



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under Article 226 of the Constitution of India. Learned Senior Counsel had further submitted that Courts have repeatedly held that they should not lightly interfere in the tender processes especially when there is no malafide or motive which is alleged against Tender Inviting Authority. The writ petitioners were careless, inspite of the fact that they are established transporters and knew every procedure which is followed and that they should sign the declaration, they committed the mistake. It is to be noted that the standard agreement was also enclosed along with the tender application.

3.2. Learned Senior Counsel would justify the wordings contained in the declaration because it clearly mentions the standard agreement and would contend that the terms of the contract / tender document should be given the same meaning which the Tender Inviting Authority ascribes to it and the process cannot be interfered by giving different interpretations. In support of his submissions, learned Senior Counsel relied upon a judgment of this Court in ***Tamil Nadu Police Housing Corporation Ltd., rep. by its Superintending Engineer Vs. P & C Projects (P) Ltd., rep. by its Executive Director, S.C.Keerthi Shankar***¹, more particularly, relying on paragraph

¹ 2018 (5) CTC 387



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Nos.36 and 39 of the judgment, to contend that whether to give one more opportunity or to reject the bid lies within the sole purview of the Tender Evaluation Committee and the Court cannot substitute its own reasons and that the Court cannot come into the merits of the decision, but it is only the decision making process alone which can be looked into. Learned Senior Counsel relied upon the judgment of this Court in ***K.M.Mustafa Vs. Indian Railway Catering & Tourism Corporation (IRCTC) Ltd., rep. by its Group General Manager/LCS²***, referring to paragraph Nos.21 and 22, to contend that the Tendering Authority concludes that the bidders have not complied with the conditions, Court cannot substitute its own reasons even if the deficiencies are trivial in nature or can be rectified by providing an opportunity.

3.3. Learned Senior Counsel further placed reliance on the judgment of the Hon'ble Supreme Court of India in ***W.B. State Electricity Board Vs. Patel Engineering Co. Ltd. and Ors.***³ to contend that the tenderer has to be vigilant enough even to check typographical errors and when the mistake could have been avoided by exercise of ordinary care and diligence and

² 2019 (2) CTC 413

³ (2001) 2 SCC 451



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when the bidder, even after discovery of such mistake, failed to act promptly and further, when the bidder had failed to follow the rules and regulations set-forth in the advertisement, the bidder cannot be given an opportunity on principles of equity. Learned Senior Counsel made specific reliance on paragraph Nos.23 and 27 of the judgment. By making reference to paragraph Nos.13 and 15 of the judgment of the Hon'ble Supreme Court of India in *Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and Anr.*⁴, learned Senior Counsel would submit that a mere disagreement with the decision making process or the decision of the administrative authority cannot be a reason for a Constitutional Court to interfere and the Constitutional Courts must defer to the understanding and appreciation of the tender documents by the Tendering Authority itself unless there is malafide or perversity in the understanding. He would further submit that the Hon'ble Supreme Court of India, in its judgment in *Central Coalfields Limited and Anr. Vs. SLL-SML (Joint Venture Consortium) and Ors.*⁵, has held in paragraph Nos.33 and 37 that no part of the tender document can be held to be superfluous or redundant and as far as possible, the Court should read the same to give meaning to it. The

4 (2016) 16 SCC 818

5 (2016) 8 SCC 622



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meaning should be from the point of view of the Tendering Authority and that judicial restraint to be exercised in interfering with the administrative action. For all the aforesaid reasons, he would pray that the Writ Appeals be allowed.

3.4. Per *contra*, Mr.N.Vijay Narayan, learned Senior Counsel appearing on behalf of the respondents / Writ Petitioners, again taking this Court to the wordings and meaning of the very declaration, would submit that the declaration itself is absolutely meaningless and even by reading from the point of view of the Tender Floating Authority, it is ambiguous. When the declaration is so ambiguous that it cannot be expected of any reasonable man to understand and sign as expected by the Tender Inviting Authority, then, it is only the bidders who should be given the benefit and it is only the Tender Floating Authority, who is the author of the document, who should face the adverse order. Learned Senior Counsel placed reliance on a judgment of the Hon'ble Supreme Court of India in ***United India Insurance Co. Ltd. Vs. Pushpalaya Printers***⁶, morefully relying upon paragraph No.6, whereunder, by following the principles of *contra proferentem*, in case of any irrationality / ambiguity, it should be considered

⁶ (2004) 3 SCC 694



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only in favour of the party who was affected by it and against the party who prepared the document.

3.5. Learned Senior Counsel further submitted that the contract is not concerning one single bidder. As a matter of fact, vehicles will be allowed on *pro rata* basis depending on the bid. It can be seen from the application of the petitioners itself that only for the purpose of participating in the tender, the petitioners have purchased nine brand new vehicles, the particulars of which are filled up in the application itself. After investing crores of rupees, the petitioners would neither willfully make any mistake in the application nor they will militate against the standard agreement. On the other hand, it is only the wordings of the very declaration itself which led to the whole issue. The learned Single Judge, considering the illegality as well as public interest, has allowed the Writ Petitions and had only directed that the technical bids of the petitioners should also be considered and absolutely, no prejudice whatsoever will be caused to the appellants and therefore, he would pray that the appeals be dismissed.

D. Findings:



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4. We have considered the rival submissions made on either side and perused the material records of the case. It is clear from the factual matrix extracted *supra* that respondents' / writ petitioners' technical bids were rejected only for the reason of not signing the above Declaration-II. The contents of the Declaration-II is also extracted above. There can be no quarrel over the proposition that the tender documents, as far as possible, should be given the same meaning which the Tender Floating Authority ascribes to it. Learned Senior Counsel, after taking through the declaration, would only contend that since the phrase '*standard document*' is contained in the declaration, the Tender Floating Authority is entitled to know whether they are complying with the standard agreement. Even then, we are at loss to make out any meaning for the declaration. In such a case, it should have been worded '*we declare that we will comply with and will not violate any clause of the standard agreement*'. Therefore, the declaration, as contained in the form, is not only irrational, but borders on absurdity. There was no question of any violation of the standard agreement even before entering into the same.



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4.1. As per the clause extracted above in 1.10(b), it is the appellants who strictly instructed the tenderers to carefully and properly read all the tender documents and fill up the application form. Any prudent / reasonable man cannot sign the Declaration-I as contained in the form at the time of submitting the tender. If the bidders mechanically sign them, again they will be violating the above clause which requires them to read carefully and fill up. Even though the writ petitioners signed, it is pleaded that the consultant who gave them advice, struck off the portion at the time of uploading. In that view of the matter, when learned Senior Counsel appearing on behalf of the appellant accepts that the declaration could have been worded better, the rule relating to *contra proferentem* would squarely apply in the instant case. The useful reference can be made to paragraph No.6 of the judgment of the Hon'ble Supreme Court of India in ***United India Insurance Co. Ltd.***'s case (cited *supra*) which reads as

"where the words of a document are ambiguous, they shall be construed against the party who prepared the document".



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4.2. The Hon'ble Supreme Court of India, also in ***Central Bank of India Vs. Virudhunagar Steel Rolling Mills Limited and Ors.***⁷, held in paragraph No.6 as hereunder:-

"6..... It is the appellant Bank which drafted the guarantee deed, and in case of doubt, the document would be read against it. This is the contra proferentem rule, which is of a vintage which brooks no contradiction."

4.3. In any event, when on the face of the document, Declaration-II is irrational and absurd, the rejection of the technical bids for not signing the same would be arbitrary and whimsical and violation of the Article 14 of the Constitution of India which would compel this Court to interfere with the process. We could find that the Learned Single Judge had only attempted his best to give a meaning to the said declaration and had not attempted to rewrite the contract as contended. We also find that the Learned Single Judge had also compelling reasons of public interest to exercise his jurisdiction under Article 226 of the Constitution of India. We also find that the stage of the process is that the matter is pending after the rejection of the technical bids of the writ petitioners. Therefore, the technical bids of the writ petitioners can also be

⁷ (2015) 16 SCC 207



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considered along with the other technical bids in accordance with law and can proceed further.

E. The Result :

5. In the result, finding no merits, these Writ Appeals shall stand dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(T.R., ACJ.)

(D.B.C., J.)

30.03.2023

Index : yes

Speaking order

Neutral Citation : yes

grs



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**T.RAJA, ACJ.,
AND
D.BHARATHA CHAKRAVARTHY, J.,**

grs

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