

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**WPA No. 16220 of 2023
With
CAN 2 of 2024**

**Sisir Das & Anr.
Vs.
Indian Oil Corporation & Ors.**

For the petitioners : Mr. Ankit Agarwal,
Mr. Nilay Sengupta,
Mr. Sujit Banerjee

For the respondents/IOCL : Mr. Amit Kumar Nag,
Mr. Partha Banerjee,
Ms. Ranjabati Ray

Hearing concluded on : 05.03.2024

Judgment on : 13.03.2024

Sabyasachi Bhattacharyya, J:-

1. Two sets of tenders were floated for running and operating Tank Trucks (TTs), respectively for carrying MS/HSD/Branded fuels for the Mourigram terminal of the Indian Oil Corporation Limited (IOCL) and for similar work regarding Aviation Turbine Fuel (ATF). The petitioners participated in the first category, were successful and were issued work orders.
2. The writ petition has been filed on the alleged arbitrary action by the respondent no. 1-IOCL by allocating works contemplated under the MS/HSD/Branded fuels tender to ATF TTs. The petitioners argue that under the relevant clauses of the contract, there is scope of the MS

TTs being allocated work under the ATF tender by upgradation and/or suitably processing their trucks, whereas there is no such complementary clause in the ATF tender or contracts.

3. It is contended that the ATF work was subsequently shifted to Barauni from Mourigram where the other ATF tankers were allocated work. However, a few of the ATF TTs which chose to remain in Mourigram were also issued work orders under the MS tender which, according to the petitioners, is *de hors* the terms of the contract.
4. It is argued that the ATF contracts contain clauses of termination and other penal action against TTs which do not comply with the instruction to shift in case of closure of location without reinstatement. In exigencies, the IOCL can, under the existing MS contract, allocate work under the MS tender only to the MS trucks. Learned counsel places reliance on Clause 4(e) of the MS tender which provides that the IOCL reserves the right to engage additional contractors/TTs at any time without giving any notice whatsoever to the contractors already appointed against the said tender. The plain interpretation of the same, it is argued, is that the work can only be allocated to the existing contractors under the same tender. In the absence of any reference to other contracts or tender, the action of the respondents in allocating work under the present tender to ATF TTs, who have been allocated work on a completely different tender, is illegal.

5. It is next argued that the Pre-Qualification Criteria (PQC) of the MS tender is different from the PQC of the ATF tender. Thus, interchange of work between the two tenders is not permissible.
6. Learned counsel also places reliance on the age of the trucks contemplated in the MS tender which envisages the newest trucks to be given preference.
7. Clause 2(i) of the MS agreements entered into with the petitioners envisages that in case of exigency, wherever required, the IOCL may ask the existing carriers to offer their MS/HSD TTs which are already under the said contract through Gate Notice for ATF transportation after sand blasting/EPI coating/upgrading as per QC norms at the same rates, terms and conditions finalized through the tender. There is no corresponding clause, it is argued, in the ATF contracts.
8. It is argued that the IOCL has sympathized with the ATF trucks which chose to remain back at Mourigram instead of exercising its rights of closure of a location without reinstatement on the shifting of the ATF transportation work to Barauni from Mourigram.
9. Learned counsel argues that the term “contractors” within the scope of the MS tender and agreements can mean only the contractors under the said contract and cannot be construed to include ATF trucks which have been allocated work under a different tender and contracts. Thus, such picking and choosing on the part of the respondents is arbitrary and violates the rights of the petitioners under the contract.

- 10.** Learned counsel for the respondent-Authorities argues that as per the specific terms of the MS tender, the volume of work to be allocated to the trucks under the said tender cannot be assured. Thus, the very premise of the right claimed by the petitioners is contrary to the tender.
- 11.** It is next argued the as per Clause 4(e) of the MS tender, additional contractors/TTs can be engaged at any time without giving any notice to the contractors. The term “additional contractors” means contractors other than those awarded contracts under the MS tender. Since the said clause provides that such allocation can be done without prior notice to the TTs to whom contracts have been awarded under the present contract, it is obvious that such additional work excludes the present contractors.
- 12.** Clause 2(g) of the MS agreement also envisages the right of the IOCL to assign the TTs in any contract in any other State, route, etc. As per Clause 2(i), the MS TTs can be allocated to work of ATF transportation after certain modifications to the trucks. It is argued that there is a corresponding clause, that is, Clause 4(e) in the tender floated for the ATF category trucks, permitting IOCL to engage additional contractors/TTs at any time without giving notice. The said clauses in the two tenders are mutually reciprocal and contemplate an inter-allocation between the contracts. It is argued that the ATF tender does not envisage any further modification of the TTs since ATF trucks are more sophisticated, being automatically attuned to the work of transportation of white oil petroleum products and bio-fuels and/or

blended fuels and requiring no further modification for such carriage.

Clause 2(i) of the ATF agreement also includes a similar term.

13. It is argued that a glance at the PQC of both the tenders shows that they are substantially similar.
14. Thus, learned counsel for the IOCL supports the stand taken by the IOCL insofar as the same is squarely within the contemplation of the tenders and the agreements entered into with the two categories of trucks.
15. Learned counsel cites *AFCONS Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and Another*, reported at (2016) 16 SCC 818 for the proposition that words used in tender documents cannot be ignored or treated as redundant or superfluous but must be given a meaning and their necessary significance.
16. Learned counsel relies on the same judgment to argue that the employer, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its terms. Even if the interpretation given by IOCL to the tender document is not acceptable to the court, that by itself may not be a reason for interfering with the interpretation given by the IOCL.
17. On the strength of the said judgment, the respondents further argue that there is no ambiguity or doubt about the interpretation given by the IOCL to the terms of the tenders and the agreements.
18. Learned counsel also cites *Silppi Constructions Contractors Vs. Union of India and another*, reported at (2020)16 SCC 489 and *N.G. Projects Limited Vs. Vinod Kumar Jain and others*, reported at (2022) 6 SCC 127

in support of the contention that judicial review in tenders and contractual terms is extremely restricted. Thus, the respondents seek a dismissal of the writ petition.

19. The first argument advanced by the petitioners is on the PQC of the two documents being different. The PQC of the MS tender can be found annexed at page no. 20 of the writ petition and that of the ATF tender at page no. 180. A careful scrutiny of the said PQCs shows that those are almost exactly identical. There is no substantial difference whatsoever between the two PQCs. Hence, the argument on the line of difference between the PQCs, which might create an impediment to interchange of trucks between works contemplated under the two tenders, is not acceptable. In any event, even if there were to be minor differences in the respective PQCs of the two tenders, the same could not *ipso facto* operate as a bar to the allocation of TTs of one tender to the other if the tender inviting authorities so felt and the terms of the tenders permitted the same.
20. Next comes the respondents' right to engage trucks and contractors outside the purview of the MS tender, for work contemplated under the said tender.
21. Clause 4(e) of the tender terms and conditions, in unambiguous terms, provides that IOCL reserves the right at their sole discretion and without assigning any reason to engage additional contractors/TTs at any time without giving any notice whatsoever to the contractors already appointed against the tender. The expression "Contractor/s already appointed against this Tender" clearly covers all

the contractors who have been allocated work under the MS tender. Hence, by necessary implication, the doing away with the requirement of giving notice to such contractors for engagement of additional trucks is a sufficient indicator that the engagement would be to contractors or TTs who fall outside the purview of the MS tender. Otherwise, the said term would be rendered completely redundant and superfluous. The reliance placed by the respondents on *AFCONS Infrastructure Limited (supra)* is perfectly justified on the count that meaning has to be attributed to each word and term of a tender/contract. Clause 4(e) is a clear indicator that such engagement pertains to “additional contractors/Tank Trucks” which also denotes that the contractors or TTs to be so engaged are additional and do not fall within the purview of the present tender.

- 22.** The clauses of the agreements entered into by the IOCL with both the ATF category trucks and the MS category trucks have corresponding clauses permitting a migration of the trucks in each of the agreements to work done under the other.
- 23.** In Clause 2(i) of the MS agreement, the IOCL is empowered to ask the existing carriers to offer their MS TTs which are under the said contract for ATF transportation after carrying out certain modifications. Insofar as the agreement entered into with the ATF TTs is concerned, sub-clause (i) of Clause 2(e) of the ATF agreement provides that the IOCL shall have the right to use the TTs under the said contract for transportation of any white oil petroleum products and bio-fuels and/or blended fuels at the same terms and conditions.

Thus, there is sufficient play at the joints permitted to the employer to use ATF TTs for transportation of non-ATF fuel as well.

- 24.** Although the respondents need not give any justification for not incorporating a similar clause of modification of the trucks as provided in the MS agreement in case of the ATF trucks, the explanation offered is sufficiently acceptable and reasonable inasmuch as ATF trucks are equipped in a more sophisticated manner for carrying ATF, which is of a superior category, thus automatically making such trucks eligible to carry non-ATF fuel without any modification being required.
- 25.** Another aspect of the MS tender cannot be overlooked. In Clause 1.1, defining the scope of work and contract period in the tender document for the MS trucks, it is clearly indicated that the TT requirement is “estimated”, the total volumes are “anticipated” and the requirement is merely “indicative”.
- 26.** Apart from the said expressions in sub-clause (a) of Clause 1.1, sub-clause (b) provides that the volume to be moved is “anticipated”.
- 27.** The Note underneath the said clause, in no uncertain terms, provides that IOCL “does not commit any firm assurance for above volume of business”, thereby denuding the petitioners of the very premise of the right asserted by them. Since the volume of work allocated under the MS tender to any particular contractor/TT is not assured, the writ petitioners do not have any contractual, legal or fundamental right to be assured of such volume which has been allegedly infringed in the

present case. Thus, the pseudo-cause of action pleaded by the petitioners does not have any legs to stand on.

28. It is entirely for the respondents to decide as to whom to allocate the work under the MS contracts and neither the petitioners nor the court, on a plain interpretation of the terms of the agreements entered into with the MS TTs/contractors, has the discretion to interfere with such decision taken by the IOCL.
29. Thus, I do not find any arbitrariness on the part of the respondents or violation of the right to equality of the petitioners to justify interference in the present challenge.
30. Accordingly, WPA No. 16220 of 2023 is dismissed on contest. Consequentially, CAN 2 of 2024 is also dismissed.
31. There will be no order as to costs.
32. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

Later

Learned counsel for the petitioners seeks an order of stay of the operation of the above judgment. However, since the writ petition has been dismissed, such stay would not serve any effective purpose.

Accordingly, the prayer for stay is refused.

(Sabyasachi Bhattacharyya, J.)