ASR 19.
Ct. no. 24.
07.05.2025

WPA 4082 of 2025

Gopal Naskar
Vs.
Hindustan Petroleum Corporation Ltd. & ors.

Mr. Debabrata Saha Ray
Mr. Pingal Bhattacharyya
Mr. Subhankar Das
Mr. Sankha Biswas

........For the Petitioner

Mr. Biswanath Chatterjee
Mr. Sobhan Kumar Pathak

.....For the respondent ns. 1 to 9

Hindustan Petroleum Corporation Limited (HPCL) flouted a tender for Transportation of Bulk POL Products MS/HSD and Branded fuels by Road EX Haldia Terminal for period of 5 years w.e.f. 01.01.2025 up to 31.12.2029.

The petitioner participated in the tender and he placed his own seven track tankers (TTs). It is pertinent to mention herein that petitioner has categorically informed during the participation that five out of seven TTs are engaged in contract with other oil marketing company i.e. Indian Oil Corporation Limited (IOCL).

Petitioner became successful and provision letter of acceptance for issue in his favour on 23rd of December, 2024.

It is the case of the petitioner that he has complied the formalities as stipulated in the letter of acceptance. He has placed all the TTs for physical verification; he has deposited the security deposit amount and also placed the documents pertaining to the TTs i.e. RC book, certificate, license and fitness certificate etc.

It is the further contention of the petitioner that he has signed the copy of agreement which was forwarded to him along with the letter of acceptance.

He submits that the respondent authority (HPCL) issued several reminders for completion of execution of agreement between HPCL and the petitioner.

It is further case of the petitioner though he has placed the signed agreement with the authority concerned but the authority concerned did not execute the agreement. It is the further case of the petitioner that the respondent authority has issued mail to the petitioner for submission of No objection certificate (NOC) in respect of 5 TTs which are attached with the IOCL.

Petitioner submits that the IOCL could not release the issue the NOC without agreement being executed / signed between HPCL and the petitioner. Thus, the NOC were not issued by the IOCL to the petitioner. Through a mail dated 22nd January, 2025 HPCL authority directed the petitioner to place NOC in respect of attached TTs, in reply petitioner has issued a mail to the HPCL containing that without execution of the agreement, the NOC of the attached TTs could not be submitted. However, a further reminder was served upon the HPCL dated 7th February, 2025 for execution of the agreement. Finally on 7th February, 2025 the letter of acceptance issued in favour of the petitioner stand cancelled.

Mr. Debbrata Saha Ray, learned senior counsel appearing on behalf of the petitioner submits that the act and action of the respondent authority is unreasonable. He submits that from the letter of acceptance it would be revealed that prior to the execution of agreement, NOC of attached TTs are not required. He specifically submits that the NOC is required to be placed at the time of induction. It is further contention of the Mr. Saha Ray that the letter of acceptance has specifically enumerated the date when the agreement has to be executed. He submits that from the mails of the concerned authority it would be revealed that at the time of verification, the petitioner has placed all the 7 TTS which were physically verified within a week from the date of issuance of LOA. The petitioner has also deposited the security amount but the respondent authority did not execute the agreement though it has been signed and forwarded by the petitioner to the authority concerned.

It is further case of the petitioner that the impugned letter of cancellation and provisional letter of acceptance referred to general tender terms and condition clause no. 19A of the tender. He submits that the clause 19A of the tender document specifically denoted that an agreement has to be executed within 15 days from the date of issue of LOA.

The petitioner pleaded specifically in the writ petition that in case of other tenderers the formalities are followed that the agreement was executed between the HPCL and the tenderers first, thereafter, the TTs are placed for induction and at that time NOC is required to be filed; but in the case of the petitioner the agreement was not executed. Mr. Saha Roysubmits HPCL only to avoid the fact that if the agreement is executed between the parties the petitioner has to given a reasonable opportunity of being heard.

He submits that the act and action of the concerned respondent authority suffers biasness. Thus the impugned letter of cancellation of provisional letter of acceptance dated 7th February, 2025 is liable to be quashed and the petitioner may be allowed to ply two free TTs.

Mr. Biswanath Chatterjee, learned counsel appearing on behalf of the HPCL submits after cancellation of impugned LOA. The provisional letter of acceptance was issued in favour of other three tenderers amongst them agreement for award of contract has been executed with one tenderers and he is engaged in the business. It is further contention of Mr. Chatterjee that now the instant writ petition is become infractuous as the entire quota has also been filled up.

HPCL authority has filed affidavit-in-opposition against the writ petition.

Let the affidavit –in-opposition be taken on record.

Mr. Chatterjee submits that the letter of acceptance issued in favour of the petitioner has unequivocal stated that the agreement has to be executed after completion of certain formalities. It is further submission of Mr. Chatterjee the agreement between the petitioner and HPCL could not be executed as the petitioner could not produce the NOC of TTs which is attached with IOCL.

Mr. Chatterjee further contended that the petitioner admittedly placed 7 TTs for the tender, out of which 5 TTs attached with IOCL; without those TTs are released or atleast NOC be given by the IOCL agreement can not be executed. It is the further submission of Mr. Chatterjee that if an agreement is executed between the petitioner and HPCL without the attached TTs being released or NOC being placed, the agreement would be itself infractuous.

He further submits that inspite of several reminders the petitioner failed to comply with the formalities by placing NOC. Furthermore, the respondent authority themselves has wrote to IOCL regarding the status of attached TTs, wherein they have informed to HPCL that among 5 TTs, 3 TTs are lying with current transport contract in respect of 2 rest TTs the NOC not have been requested by the transporters. He submits that the conduct of the petitioner shows that they could not produce the attached TTs for execution of the agreement. Thus, the authority concerned has rightfully cancel the provisional letter of acceptance issued in favour of the petitioner.

It is the further contention of Mr. Chatterjee that though no scope of hearing given to the petitioner but the petitioner was given sufficient opportunity through mails informing him inspite of filling to comply with the formalities of LOA, the provisional LOA would be cancelled. The explanation / reply of the petitioner had no merit to entertain thus the act and action of the respondent authority is justified.

In support of his contention Mr. Chatterjee has cited decisions of Hon'ble Apex court passed in:

1. **Banshidhar Construction Private Limited –Vs.- Bharat Coking Coal Limited & Ors. (2024) 10 SCC 273**
2. **N. G. Projects Limited-Vs.- Vinod Kumar Jain & Ors. (2022) 6 SCC 127.**

3. **Agmatel India Private Limited –Vs.- Resoursys Telecom & Ors. (2022) 5 Supreme Court Cases 362**

Mr. Chatterjee has cited the relevant trend of decision and law of the Hon'ble Apex court in respect of interference under Article 226 of the Constitution of India in the tender matters.

In Banshidhar Construction Private Limited the Hon'ble Apex court after following Sterling Computers Ltd. Vs. M & N Publications Ltd. as well as Tata Cellular Vs. Union of India and Jagdish Mondal –Vs.- State of Orrisa have held that " by way of judicial review court cannot examine detail of terms of contracts which have been entered into by public body or State.Court have insert limitation of scope of any of such enquiry but at the same time court can suddenly examine whether decision making process was reasonable, rational, non-arbitrary and violative of Article 14 of Constitution of India.

In N. G. Projects Limited the Hon'ble Apex court has also considered its further opinion in Apcon Infrastructure Limited as well Uflex Limited-Vs. State of Tamilnadu and is of opinion that

"In view of the above judgments of this Court, the writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The

Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with mignifying glass in its hands, rather the Court should examine as to whether the decision making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present day Governments are expected to work."

In **Agmatel India Private Limited (supra**) Hon'ble Supreme Court after observing the earlier decision of the Apex court in **Galaxy Transport Agency vs. New J.K. roadways and Apcon infrastructure Limited** has opined that :

"The scope of judicial review in contractual matters, and particularly in relation to the process of interpretation of tender document, has been the subject-matter of discussion in various decisions of this Court. We need not multiply the authorities on the subject, as suffice it would be refer to the three-Judge Bench decision of this Court in Galaxy Transport Agencies wherein, among others, the said decision in Afcons Infrastructure has also been considered; and this Court has disapproved the interference by the High Court in the interpretation by the tender inviting authority of the eligibility term relating to the category of vehicles required to be held by the bidders, in the tender floated for supply of vehicles for the carriage of troops and equipment."

After placing the judgement and after placing the law enumerated by the Hon'ble Apex court Mr. Chatterjee submits that the HPCL authority has flouted the tender and they are the best person being the author of the tender to incorporate the same.

Mr. Chatterje further argued that the tender document has been properly understand and made available to the petitioner through LOA but the petitioner has failed to comply with the formalities of LOA. Thus, the HPCL authority has correctly cancelled the letter of LOA in favour of the petitioner. He further submits that the Hon'ble Apex court has time and again observed that a constitution court under jurisdiction under its Article 226 of the Constitution of India shall keep restraint, evaluation and comparison of tender document by the court is impressionable.

In reply Mr. Saha Ray placed a decision of Division Bench of this court passed in **Indian Oil Corporation Ltd. & Ors. –Vs. Ajit Kumar Murmu (MAT 1905 of 2024)** and submits that the Division Bench has clearly envisaged that when no mal practice has been observed by the tenderer the entire **list** can not be black listed.

Reliance has been placed upon paragraph 18, 19 of the observation of Hon'ble Court is as follows :

18. "Initially, the show-cause notice called upon the writ petitioner to submit documents to justify the declaration of month and year of manufacture of 7 out of the 14 TTs offered by them. Writ petitioner submitted documents and the Oil Company was satisfied there was no incorrect declaration with regard to 6 of the TTs. However, the month and yer of manufacture of one TT bearing registration no.WB11C5642 was found to be incorrectly made as November, 2011 instead of October 2014 as appearing from registration office records. As per Clause 8.2.2.13 of ITDG, this would justify the blacklisting of this TT only. However, Mr. Nag relies on a sub-para in Clause 8.2.2.2 which, inter alia, provides in case complicity of the contractor is established even in first instance of malpractice, entire fleet shall be blacklisted,

contract terminated and security deposit forfeited. He also relies on Clause

19. of the tender conditions which, inter alia, provides in case false, forged information is detected subsequent to award of contract, the contract is liable to be terminated."

Mr. Saha Ray has also placed a decision of this court in passed in **Prasanta Soren –Vs.- Hindustan Petroleum Corporation Lrd. & Ors. (WPA 8707 of 2025)**, wherein this court in a motion stage has issued an order in favour of the tenderers to ply free vehicle under the contract.

Heard the learned counsel, perused matter in hand. It is the case of the petitioner that after issuance of LOA, he has complied with all the formalities as envisaged in the LOA. To understand the required formalities in the LOA, it is required to set out the formalities.

You are requested to come forward immediately for completing the following formalities:

1. ***Kindly submit Performance Security of Rs. 8 Lakhs/Rs. 50,000/- (as applicable) in the form of Demand Draft drawn on any scheduled bank (other than a co-operative bank) in favour of M/s Hindustan Petroleum Corporation Limited as specified by HPCL or in the form of Bank***

Guarantee strictly in the specified proforma as provided in the Tender Document valid up to 6 months beyond the expiry date of the contract.

2. ***Please bring the original documents of MSE Certificate/Caste Certificate (if applicable) offered in the tender for our verification.***
3. ***Please bring the original documents of owned/attached tank trucks offered in the tender as given below for our verification viz. R.C. Book, Calibration Certificate, Explosive License & Fitness Certificate and Photocopies of the same for our records.***

Sr. No.	***Registration No.***	***Owned/Attached/ Booking Slip***	***Bottom loading/Top loading***	***Notional Capacity schedule in KL***
1.	***WB11C5514***	***Owned***	***Top loading***	***12<18 KL***
2.	***WB25K7190***	***Owned***	***Top loading***	***18<25 KL***
3.	***WB25K7188***	***Owned***	***Top loading***	***18<25 KL***
4.	***WB11E1618***	***Owned***	***Top loading***	***18<25 KL***

5.	***WB11E1718***	***Owned***	***Top loading***	***18<25 KL***
6.	***WB784231***	***Owned***	***Top loading***	***18<25 KL***
7.	***WB11E0107***	***Owned***	***Top loading***	***18<25 KL***

8. Please note that as per "General Terms and Conditions-Execution of Agreement", placement of TTs less than Number mentioned in LOA/Work Order shall not be permitted.

4. You are required to complete the above formalities within 15 days (90 days in case of booking slip) of the date of this LOA and place the tank trucks for induction immediately thereafter.

5. The contract will be valid for a period of 5 years up to 31.12.2029."

The dispute arose between the parties on the score though petitioner had placed the singed agreement with the concerned authority (HPCL) but they required petitioner to place NOC in first instance before execution of agreement.

It is the contention of the petitioner that HPCL cannot ask for NOC for attached TTs before execution of agreement. On the other hand, It is the submission of the HPCL that the agreement has to be executed within the stipulated period of 15 days from the date of issuance of LOA and before execution of LOA, the NOC of attached TTs are required to be placed.

Having heard learned counsel for the parties and after perusing the LOA it appears that the concerned authority has issued several mails and reminders to place and submit NOC in respect of attached TTs. Petitioner failed to do so, consequent by the HPCL has issued the impugned cancellation letter in terms of clause 19 (A) of the tender document.

Clause 19 (A) is hereby set out for proper understanding.

"19(A) Successful tenderer/s will be required, before undertaking the contract, to execute the Agreement, within 15 days of the date of issue of the LOA/work-order and should physically place the Tank Truck at the location within 30 days from the issue of LOA/work Order. HPCL may allow additional time of up to 15 days for Execution of Agreement. In case of failure, the HPC will have the right to cancel the LOA, Date of HPCL email sent along with LOA copy to bidders will be considered as issue date of LOA."

Surprisingly neither the LOA nor the clause 19A of the tender agreement discloses about time of submission of NOC of attached TTs. It is admitted fact that bidder can permitted to participate a tender proceeding by using his attached TTs. It is quite dark in the letter of acceptance that when the NOC would be required, whether it would be prior to the execution of the agreement or after execution of agreement. It is the contention of the petitioner that in general rule, the NOC is required to be placed at the time of induction i.e. after the execution of agreement. But it is the contention of respondent authority that in terms of clause 19 (A) of the tender document, the agreement has to be executed within 15 days.

The time when NOC of attached TTs are required to be placed by the tenderer is not clearly stipulated in the contract/tender.

By virtue of decision of Hon'ble Apex court in **Agmatel India Private Limited** followed by earlier decision in **Galaxy transport agency** and **Apcon infrastructure.** It is law of this landthat the concerned authority who flouted the tender is the best person to interpret the tender.

To understand the best perport and meaning of the document and its interpretation thereof I think it beneficial to adopt the vires of Hon'ble Division Bench of Bombay High court in **Adant Ports and Special economic Zone Vs. Board of trustee of Jaharlalneheru Port Authority** passed in writ petition no. 14657 of 2022 wherein it has been specifically enumerated at paragraph 43 by the Division Bench that ---

"*Our understanding of the law, drawing guidance from the decisions noticed above, is that the terms and conditions of a tender are not to be read and interpreted in the same manner a statute is read and interpreted. The legislature make laws actuated with some policy to curb public evil or to effectuate public good. As and when an issue arises before them, it is the duty of the constitutional courts to interpret the law and declare what the law is. If the Courts find gaps in the working of the law while interpreting and declaring what the law is, it is not precluded from ironing out the creases by appropriate technique of interpretation to infuse life into the law; but it si impermissible for the Courts to alter the material of which the law is woven. Such ironing out of the creases, inter alia, is generally premised on the Court's preception of what the legislative intent was. In so doing, the Courts are entitled to interpret and declare the law without consulting the legislature to explain what was intended while enacting the law. Legislative functions come to an end once the law is passed. When the constitutionality of a law is challenged or when the Court is otherwise required to interpret and declare what the law is, the parties opposing/supporting the law are only heard. However, in regard to interpretation of tender terms and conditions, the perspective is completely different and such an exercise, as can be taken recourse to in interpreting a statute, would be impermissible. Terms and conditions in a tender are set which would advance the tendering authority's interest. When the terms and conditions of a tender fall for consideration and the need arises for the Court to understand what is meant by a particular clause or what is the requirement of a particular clause*

in such tender, the tendering authority's version has to be heard by the Court. If such version of what it intended by inserting the relevant clause appears to the Court not to be manifestly unfair, utterly unreasonable, totally arbitrary, or thoroughly unjust, the Court cannot substitute its view of what would have been a better course for the tendering authority to follow to achieve the object of the tender. Deference to the view of the tendering authority by the Courts is the general rule. The adverbs in the preceding sentence would signify a level higher than, what in one's preception, the requirement of a clause would amount to being seen as unfair, unreasonable, arbitrary or unjust. When a party invokes the Court's jurisdiction and claims that a clause in the tender ought to be read in the manner he/it reads it, in such a case, the tender terms and conditions have to be read by the Court and understood in the language they are plainly expressed. Even if any particular clause is ambiguous and upon a query being raised by the Court as to what the clause precisely means or what is its requirement, the meaning that the tendering authority gives has to be accepted without reservation unless, of course, such meaning contravences a constitutional right. This is because of the freedom that has to be conceded to the tendering authority to choose with whom it would like to enter into a contractual relationship and the allowance of certain measure of 'free play in the joints.' Which is a necessary concomitant for an agency working in the administrative sphere as in the present case".

However the Hon'ble Division Bench specifically make a distinction between the interpretation of a statute and the interpretation of tender document.

In my view the time for filing of NOC for attached TTs are not specifically mention either in the LOA or in any clause of the tender document.

In that score and according to the observation of the Hon'ble Division Bench in Adani Port (supra) as well as the observations of Supreme court (supra). HPCL is the best person to interprete the meaning and purpose of requirement of submission of NOC of the attached TTs before execution of the agreement. In this case this court find no justification to interpret otherwise to that of the concerned authority.

Hence, I find no merit to interfere with the letter of cancellation issued by the concerned authority on 7th February, 2025.

Under the above observation, the writ petition appears to make not meritorious and the same is hereby disposed of.

[Subhendu Samanta, J]