IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

RESERVED ON: 30.04.2025
DELIVERED ON: 06.05.2025

PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH
W.P.A. 8748 OF 2025
BULK LPG TRANSPORT CONTRACTORS ASSOCIATION, EASTERN INDIA AND ORS.
VERSUS
THE UNION OF INDIA AND ORS.
WITH
WPA 9056 OF 2025

RAKESH KUMAR SHAW
VERSUS
THE UNION OF INDIA AND ORS.

Appearance:-

Mr. Kalyan Bandyopadhyay, Ld. Sr. Adv.
Mr. Sirsanya Bandyopadhyay, Adv.
Ms. Anusmita Bhattacharya, Adv.
.....For the Petitioners

Mr. Rabindra Nath Bag, Ld. Sr. Adv.
Ms. Mary Datta, Adv.
Mr. Sk. Md. Wasim Akram, Adv.
....................For Union of India
In WPA 8748 of 2025.

Mr. Dhiraj Trivedi, Ld. Sr. Adv. (DSG)
Mr. Praloy Bhattacharjee, Adv.
..................For Union of India
In WPA 9056 of 2025.

Mr. Jaydip Kar, Ld. Sr. Adv.
Mr. Sanjib Kr. Mal, Adv.
Mr. Bimalendu Das, Adv.
Ms. Shomrita Das, Adv.
................For the respondent nos. 4&5
[BPCL]

Mr. Biswanath Chatterjee, Adv.
Mr. Sobhan Kumar Pathak, Adv.
Mr. Sohan Krishna Chatterjee, Adv.
................For the respondent nos. 2&3
[HPCL]

Mr. Amit Kumar Nag, Adv.
Ms. Pritha Bhowumik, Adv.
..............For the respondent nos. 6&7
[IOCL]

JUDGMENT

Gaurang Kanth, J.

1. The writ petitions, being WPA 8748 of 2025 and WPA 9056 of 2025, have been filed challenging the tender notices bearing NIT Nos. LPG/BULK/TT/IOC/WB/2025-30, LPG/BULK/TT/ BPC/ WB/2025-30, and LPG/ BULK/ TT/HPC/WB/2025-30, issued respectively by Respondent Nos. 2, 3, and 6. WPA 8748 of 2025 has been preferred by an association, whereas WPA 9056 of 2025 has been filed by an individual. Both petitioners have raised identical grounds of challenge, and the contesting parties in both the writ petitions are the same. During the course of the hearing, arguments were advanced only in WPA 8748 of 2025. Since the same counsels are appearing in both the writ petitions, no further submissions were made in WPA 9056 of 2025.

2. In view of the above, this Court deems it appropriate to dispose of both writ petitions by a common judgment. For the sake of convenience, reference shall be made to the facts and grounds as stated in WPA 8748 of 2025.

3. The Petitioners, in the present writ petition, seek to challenge the bulk LPG transportation tenders bearing NIT Nos. LPG/BULK/TT/IOC/WB/2025-30, LPG/ BULK/ TT/BPC/WB/ 2025-30, and LPG/ BULK/ TT/ HPC/ WB/ 2025-30, issued respectively by Respondent Nos. 2, 3, and 6, who are Oil Marketing Companies (OMCs), for the purpose of awarding bulk LPG transportation contracts by road within the State of West Bengal. The grievance of

the Petitioners is that the impugned tenders have been arbitrarily framed so as to confer an undue advantage upon certain classes of contractors, to the exclusion and detriment of others. It is further alleged that the terms and conditions of the said tenders are violative of the principles of fairness, transparency, and equal opportunity, thereby undermining the objective of ensuring a level playing field in the tendering process.

4. The facts leading to the present case is as follows:

5. It is the case of the Petitioners that Petitioner No. 1 is a society registered under the West Bengal Society Registration Act, 1961 and is established for the welfare and well-being of Bulk LPG Transport Contractors of Eastern India and for protecting their business interests. It is a part of All India Bulk LPG Transporters Federation. Petitioner No. 2 is the Secretary of the Petitioner No.1. Petitioner No. 2,3, and 4 are all Tank Truck Owners and contractors of the Respondent OMC's. In the present writ Petition, Petitioner No. 1 represents 18 MT Tank Trucks (TT's) owners.

6. State wise tenders have been floated by Respondent OMC's on 01.03.2025 for meeting the State wise requirement of Tank Trucks having capacity 18 MT and 21 MT for carrying the LPG from the manufacturing units to bottling plants.

7. For the State of West Bengal, the Respondent OMC's floated NIT's having No.'s LPG/BULK/TT/IOC/WB/2025-30, LPG/ BULK/TT/BPC/WB/2025-30 and LPG/ BULK/ TT/HPC/ WB/ 2025-30 for the bulk LPG transportation contracts by road within the state.

After the issuance of the said NIT, the Respondents issued 4 Corrigendum to the main tender.

8. Being aggrieved by the same, All India Bulk LPG Transporters Federation filed various representations dated 20.03.2025, 25.03.2025, 27.03.2025 before the Respondents for reconsideration of the tender conditions, however, no response is received yet.

9. Initially, the last date for the submission of the tender was fixed for 30.04.2025. Hence due to the urgency expressed by the Petitioner, the matter was taken up on mentioning and after preliminary hearing, the parties are directed to file their respective replies/written submission within 2 days. The respondents filed their affidavit in objection and the Petitioner filed his reply to the said objections. In the meanwhile, the Tender submission date was extended to 09.5.2025. Hence the matter was heard at length.

Argument on behalf of the Petitioner

10. It is the submission of the learned senior counsel for the petitioner that the tender under consideration is defective on account of four major grounds. Learned senior counsel draws the attention of this Court to Section 5, Part B, Clause 1 of the Notice Inviting Tender (NIT), wherein a sequence of truck allocation was specified, indicating the order of priority of vehicles to be accepted. Subsequently, a Second Corrigendum dated 25.03.2025 was issued, amending the aforementioned clause by excluding the 21 MT proposed Trucks at Serial No. 3 and including 21 MT SUIS/SC/ST/SUIS Women Trucks. Consequently, the revised priority list places 21 MT Trucks at Serial

Nos. 1 to 5 and 18 MT Trucks at Serial Nos. 6 to 10. According to the petitioner, this revision gives undue preference to 21 MT Trucks over 18 MT Trucks and is therefore arbitrary in nature.

11. The second limb of the argument advanced by the learned senior counsel for the petitioner pertains to Section I, Clause VII, which details the manner in which rates are to be quoted. As per the said clause, bidders are required to quote rates within a band of -5% to +5% of the Benchmark Rate (BMR). It is submitted that the schedule rate for 21 MT Tank Trucks (TTs) is significantly lower than the scheduled rate for 18 MT TTs. The petitioner contends that these clauses have been deliberately incorporated with mala fide intent to exclude 18 MT TTs and to provide preferential treatment to 21 MT TTs.

12. The third contention of the petitioner relates to the tender floated by Hindustan Petroleum Corporation Limited (HPCL). As per the tender, the total requirement for TTs is 202, whereas the number of reservations earmarked for SC/ST categories is 118. It is submitted that this results in a reservation of more than 50%, which is in violation of the constitutional cap as laid down by the Hon'ble Supreme Court in ***Indira Sawhney v. Union of India,*** reported as **1992 Supp (3) SCC 217**.

13. Learned senior counsel for the petitioner further submits that Clause 33.1, Part B of the NIT, which restricts multiple bidding, is unreasonable, restrictive, and curtails free competition. It is also contended that several clauses of the tender do not prescribe any experience criteria for bidders. Furthermore, it is submitted that the

method adopted to calculate the BMR is flawed, with the Southern Cluster being offered a lower BMR as compared to the Northern, Eastern, and Western Clusters.

14. In view of the foregoing, learned senior counsel for the petitioner submits that the tender conditions are arbitrary, discriminatory, and violative of Article 14 of the Constitution of India, and hence, liable to be struck down.

Arguments on behalf of the Respondent Nos. 2,3,4 &5s

15. Learned counsel for the Respondent Nos. 2&3 submits that the impugned tender pertains to the engagement of bulk LPG transporters for the transportation of LPG from the manufacturing units to various bottling plants. It is submitted that, collectively, the three oil marketing companies require in excess of 800 tank trucks for a contractual period of five years. Learned counsel further submits that the earlier contract was awarded in the year 2018 for an initial period of five years, which was subsequently extended for an additional period of two years. It is contended that several of the Petitioners herein were beneficiaries under the said previous contract, and that the instant challenge to the present tender has been initiated with malafide intent, aimed at stalling the tendering process so as to seek continued extension of their existing contractual arrangements.

16. Learned Counsel for the Respondent Nos. 2&3 submits that tender bearing No. LPG/Bulk/TT/HPC/WB/2018 which was floated for award of Bulk LPG Transportation Contract for the Road by the State

of West Bengal for the year 2018-2023 and majority of the members of the petitioner No.1 participated in the same. The conditions of the said tender were substantially same as that of the present Tender. Petitioner No.1 or its members never challenged the terms of the Tender then, they all participated in the said tendering process and benefits out of that. Hence the present challenge is made with malafide intention to delay the tendering process.

17. With respect to the objection raised by the Petitioner concerning the allocation of more than 50% of the quota under the reserved category, learned counsel for the Respondent submits that such objection is applicable, if at all, only to the tender issued by Hindustan Petroleum Corporation Limited (HPCL), and not to those issued by Indian Oil Corporation Limited (IOCL) or Bharat Petroleum Corporation Limited (BPCL). It is further submitted that, in terms of the guidelines issued by the Government of India vide Notification dated 18.08.1994, all public sector oil companies are mandated to earmark specific quotas for candidates belonging to the Scheduled Castes and Scheduled Tribes (SC/ST). It is clarified that while unfilled quotas for a given year may be temporarily allocated to the general category, such unfilled quotas are required to be carried forward to the subsequent tendering process. In the present case, the SC/ST quota for HPCL has been fixed at 118, inclusive of the carry-forward quota from previous years. In the event that any quota remains unfilled in the present tendering process, the same shall be temporarily diverted to the general category, while an equivalent number shall again be carried forward for consideration in the next

tender. It is the specific submission of the Respondent that the process of quota allocation is strictly in compliance with the directions issued by the Government of India and that no prejudice shall be caused to the Petitioner, inasmuch as any unfilled SC/ST quota shall be allotted to the general category during the current tendering cycle.

18. Learned senior counsel for the Respondents further submits that multiple bidding is restricted in order to avoid cartelization. It would ensure fair competition and wide publication.

19. Learned senior counsel for the Respondents emphasized that the present matter pertains to a commercial tender floated by the Respondents, and accordingly, preference has been accorded to tank trucks (TTs) bearing lesser financial obligations. It is submitted that consistent preference has been given to 21 MT tank trucks, which are larger in capacity and equipped with advanced technology. It was further pointed out by the Learned senior counsel that even in the 2018 tender, preferential treatment had been extended to 21 MT TTs, wherein 15% of the total allocation was reserved for such vehicles. In the present tender, this reservation has been increased to 25%. It is additionally submitted that in the event of non-availability of 21 MT TTs, the 18 MT TTs shall be considered to fill the unallocated quota. The Learned Counsel also submitted that despite a 25% cap for 21 MT TTs, the remaining 75% of the tendered quantity remains available for 18 MT TTs, thereby offering a comparatively larger share to the latter category.

20. With respect to the issue of cost, learned senior counsel for the Respondents submits that the Benchmark Rate (BMR) for the 21 MT Tank Trucks (TTs) is comparatively lower due to the difference in carrying capacity between the two types of TTs. The rate is determined based on the fixed and variable costs associated with the operation of the TTs and is calculated on a "per metric tons (MT)" basis. Since the 21 MT TTs are capable of transporting a larger quantity of LPG, they are more cost-effective, resulting in a lower BMR when compared to the 18 MT TTs.

21. It is therefore contended that the present challenge is malafide and intended solely to derail the ongoing tender process, thereby enabling certain individual contracts to be extended indefinitely for the benefit of a select few.

22. With these submissions, Learned Counsels for the Respondents prays for the dismissal of the present writ Petition.

Legal Analysis

23. This Court heard the arguments advanced by the parties and examined the documents placed on record.

24. The legal position with respect to the scope of judicial interference in matters pertaining to commercial contracts involving the State is well-settled and no longer *res integra*. The award of a contract whether by a private entity, a public body, or the State is fundamentally a commercial transaction. In arriving at decisions in such matters, commercial considerations are of paramount importance. The State or its instrumentalities are entitled to adopt a procedure of their own choosing for awarding contracts and to

prescribe terms and conditions of the invitation to tender, which ordinarily do not invite judicial scrutiny, being within the contractual domain. While the power of judicial review may be exercised to examine the decision-making process with a view to prevent arbitrariness, unreasonableness or favoritism, the Courts do not sit in appeal over commercial decisions taken by the State. Pragmatic and contextual adjustments by the tendering authority, as warranted by the facts and circumstances, are permissible. The Courts cannot annul or modify the terms of a tender merely on the ground that alternative formulations may have appeared to be fairer, more judicious, or more reasonable.

25. In the present case, the Petitioner has contended that the Respondents have structured the clauses of the impugned tender in a manner that accords undue preference to 21 MT tank trucks (TTs) over 18 MT TTs. The Respondents, on the other hand, have taken the position that 21 MT TTs are larger vehicles equipped with more advanced technology, and that it is in their commercial interest to engage a greater number of such vehicles. As the tendering authority, it is well within the prerogative of the Respondents to frame the terms and conditions of the tender in accordance with their operational and commercial requirements. The law is well-settled that the formulation of tender conditions falls squarely within the exclusive domain of the tendering authority, and the scope of judicial review does not extend to substituting the wisdom of the Court for that of the authority in commercial matters. In the present instance, the decision to accord preference to 21 MT TTs has been taken by the Respondents in

exercise of their commercial judgment, and this Court does not find any arbitrariness or illegality in the same. Accordingly, the submission of the Petitioner on this ground is found to be devoid of merit and is hereby rejected.

26. With regard to the objection raised by the Petitioner concerning the allocation of more than 50% of the quota under the reserved category, this Court finds merit in the submissions advanced by learned counsel for the Respondent. It has been duly demonstrated that the Respondent HPCL, has acted strictly in conformity with the guidelines issued by the Government of India. In the absence of any material to suggest malafide, arbitrariness, or deviation from the prescribed norms, this Court is not inclined to interfere in the matter. Accordingly, the objection raised by the Petitioner in this regard stands rejected.

27. Even as regards the objection raised by the Petitioner concerning multiple bidding, this Court finds merit in the stand taken by the Respondent. The inclusion of a clause prohibiting multiple bidding is a reasonable measure intended to prevent cartelization and ensure a fair and competitive bidding process. It is a well-recognized practice for tendering authorities to incorporate such provisions in order to safeguard the integrity of the procurement process and to protect against anti-competitive practices. In the present case, no arbitrariness or malafide intent has been demonstrated in the inclusion of the said clause. Accordingly, the objection raised by the Petitioner on this ground is devoid of merit and stands rejected.

28. Upon consideration of the rival submissions advanced by the learned counsel for the parties and on a careful perusal of the materials placed on record, in light of the settled legal position, this Court is of the considered opinion that the impugned tender conditions do not manifest any element of arbitrariness, malafides, discrimination, or bias. The incorporation of the said conditions by the Respondents is found to be in furtherance of their legitimate commercial interests, which is well within their domain and permissible under law. It is further noted that the Respondents have acted in conformity with the guidelines issued by the Government of India, and in the absence of any cogent material to suggest malafide intent, no illegality can be attributed to their actions. Accordingly, the impugned clauses cannot be assailed on the ground of being unreasonable or ineffective in achieving the object sought to be fulfilled. It is not the case of the Petitioner that they have been barred from participating in the tender; on the contrary, sufficient opportunity has been made available to them, with 75% of the quota still open for competition.

29. In view of the principles enunciated by the Hon'ble Supreme Court, greater latitude is to be accorded to the State and its instrumentalities in the formulation of tender conditions, particularly in matters involving commercial and policy considerations. So long as the impugned conditions are not manifestly arbitrary, unreasonable, or violative of constitutional mandates, judicial interference under Article 226 of the Constitution of India is not warranted. In the absence of any such infirmity, this Court finds no merit in the present writ petition.

30. Accordingly, both the writ petitions stand dismissed.

(Gaurang Kanth, J.)

SAKIL AMED (P.A.)