07
08.05.2025
Ct. No. 11
Jayanta

MAT 697 of 2025
with
IA No. CAN 1 of 2025

Bulk LPG Transport Contractors Association
Eastern India & Anr.
Vs.
Union of India & Ors.

Mr. Sirsanya Bandopadhyay
Mr. Arka Kr. Nag
Ms. Utsa Podder
.... For the Appellants.

Mr. Rabindra Nath Bag, Ld. Sr. Adv.
Mr. Sk. Md. Wasim Akram
Mr. Md. Abdul Gani
Ms. Mary Datta
..... For the Respondent No. 1/UoI.

Mr. Biswanath Chatterjee
Mr. Sobhar Kumar Pathak
..... For the Respondents 2 & 3/HPCL.

Mr. S. K. Mal
Mr. B. Das
Ms. Shomrita Das
..... For the Respondents No. 4 & 5/BPCL.

Mr. Saptangsu Basu, Ld. Sr. Adv.
Mr. Sagar Bandyopadhyay, Ld. Sr. Adv.
Mr. Amit Kr. Nag
Mr. Ranjabati Ray
..... For the Respondents No. 6 & 7/IOCL.

Affidavit-of-service, as filed, be kept on record.

The present appeal has been preferred by the Bulk LPG Transport Contractors Association Eastern India (hereinafter referred to the said Association) and its functionary challenging the judgment dated 6th May, 2025 passed by the learned Single Judge in the writ petition WPA No. 8748 of 2025. The said writ petition was preferred primarily challenging three tender notices issued by the respective oil companies being the Hindustan Petroleum Corporation Limited, Bharat Petroleum Corporation Limited and the Indian Oil Corporation Limited (hereinafter referred to as the OMCs). The said writ petition was heard along with another writ petition being WPA 9056 of 2025. Initially by an order dated 24th April, 2025 the learned Single Judge directed the parties to exchange their affidavits after recording the contentious issues urged by the writ petitioners. Pursuant thereto, the parties exchange their affidavits and thereafter the said writ petitions were finally heard and dismissed by the judgment impugned in the present appeal.

As the last date for submission of bids has been scheduled on 12th May, 2025 upto 3.00 p.m. and as all the pleadings exchanged by the parties before the learned single Judge have already been annexed to the stay application, the appeal itself is taken up for final hearing with the consent of the parties.

Mr. Sirsanya Bandopadhyay, learned advocate appearing for the appellants submits that the tenders were floated for the purpose of awarding bulk LPG transportation contracts by road within the State of West Bengal inviting applications from 18 Metric Ton Tank Truck (hereinafter referred to as MT TT) and 21 MT TT owners. The clauses in the said tender notices are arbitrary and have been designed to grant benefit to certain contractors to the exclusion of the rest. The said clauses defeat the purposes of fair play and level playing field.

Drawing our attention to a corrigendum annexed at page 143 of the stay application, Mr. Bandopadhyay submits that the clause pertaining to '*Truck Allocation Order'* is saddled with a condition that *'Subject to finalized 21 MT rates lower than finalized 18 MT rates and state registered trucks quoting at floor rates'*. The schedule rate chart annexed at page 39 of the stay application would reveal that the bid of 18 MT TT owner can never be below the 21 MT TT owner and as a consequence thereof, a 18 MT TT owner is deprived of an opportunity to submit any bid below the bid of a 21 MT TT moreso when clause VII of the notice at page 60 of the stay application provides, *inter alia,* that the Bench Mark Rate (hereinafter referred to as BMR) should be quoted strictly between the minimum and the maximum band for all slabs of +/-5% only. A composite perusal of the said clauses would thus reveal that the 21 MT TT owners are being preferred and such fact stands admitted by the OMCs. It would thus be explicit that the terms of the invitation to tender are tailor-made to suit the convenience of a particular class.

He further argues that initially in the tender documents it was specified that '*if the bidder does not have minimum one OWN truck, then the bid of such bidder* *will not be considered*'. However, subsequent thereto, a corrigendum was issued wherein it was, *inter alia,* provided that the persons with whom the owners of the TT enter into an agreement, the said intending purchasers on the basis of such agreement would also become eligible to participate in the process. Such corrigendum is *ex facie* illegal in as much as even a person who is not the owner of a vehicle would be getting an avenue to participate in the tender process.

He contends that the clause pertaining to *'Reserved Trucks Quantities'* annexed at pages 55 and 56 of the stay application would reveal that in the event SC/ST participants are not available then such vacancies would be allotted to the unreserved category participants and as a consequence thereof, the said reserve vacancies would stand abolished. Such procedure, as adopted, is arbitrary and unreasonable.

He argues that clause 7.7 as regards *'Clarification on biddings aspects',* annexed at page 99 of the stay application provides *inter alia* that *'Each bidder can submit only ONE bid. It is clarified that a person shall be deemed to have submitted multiple bids if a person submits more than one bid either individually or in any combination of person (individual capacity, proprietor, affiliates, partnership, association of persons, Company)'*. In view of the said clause a TT owner having participated as an individual is denied participation in other capacities detailed in the said clause. The said clause is thus restrictive in nature denying submission of multiple bids and it narrows down the zone of participation. Such act smacks of *mala fide* and arbitrariness.

In support of his arguments Mr. Bandhapadhyay has placed reliance upon the judgments delivered in the cases of *Ramana Dayaram Shetty- vs.- International Airport Authority of India & Ors.,* reported in, (*1979) 3 SCC 489, Meerut Development Authority. vs. Association of Management Studies & Anr.,* reported in, *(2009) 6 SCC 171, M/s Orient Blackswan Pvt. Ltd. vs. Sandip Nayak,* reported in, *2015 SCC Online Cal 7622* and *Karanpura Development Company. Vs. Union of India & Ors.,* reported in, *1988 Supp SCC 488.*

Mr. Bag, learned advocate appearing for the Union of India denies and disputes the contention of the appellants and submits that threshold *mala fides*, intention to favour someone or arbitrariness, must be made before a Constitutional Court interferes with a decision-making process. In the present case no *mala fide* or arbitrariness can be attributed to the acts of the OMCs and there is no error in the decision-making process warranting interference.

Mr. Basu, learned senior advocate assisted by Mr. Sagar Bandhyapadhy, learned advocate, appears on behalf of IOCL, Mr. Mal, learned advocate appears on behalf of BPCL and Mr. Chatterjee, learned advocate appears on behalf of the HPCL.

Mr. Basu argues that the clause towards specification of BMR, the schedule rate chart for 21 MT TT and 18 MT TT are applicable to all participants in the tender process. The infirmities alleged by Mr. Bandhyapadhy in respect of *'Truck Allocation Order'* are not tenable inasmuch as the conditions specifically provides that the number of 21 MT TTs would be limited to a maximum of 25% and the rest 75% would be for 18 MT TTs and such categorization would not in any manner be contrary to the sequence as provided under the clause *'Truck Allocation Order'*.

Referring to the schedule rate charts at pages 39 and 40 of the stay application, he argues that the BMR for 21 MT TT would always be lower than 18 MT TT due to the difference in carrying capacity. The rate is based on *'per unit MT'*. The former would be carrying a load of 21 MT whereas the latter would be carrying a load of 18 MT.

He argues that the appellant no.1 is an Association consisting of members of both 21 MT TT and 18 MT TT. Some of the members of the said Association have already participated in the tender process. By challenging the tender process, the said Association is taking a stand contrary to its own members. It would be interesting to note that the members of the said Association were participants in the earlier tender process in which the terms and conditions are identical to the terms and conditions of the present tender process save and except the clauses 7.6 and 7.7 relating to multiple bidding. Thus, the sole intent of the appellants is to stall the entire tender process which would seriously prejudice the OMCs and would be having an impact upon transportation of LPG.

According to Mr. Basu, the corrigendum clause at pages 188 and 189 of the say application upon which reliance has been placed by Mr. Bandhapadhyay, is neither arbitrary nor unreasonable. The said clause needs to be read in its totality and not in isolation. The corrigendum clause begins with the rider that *'in cases of TTs operating in the existing contract whose ownership cannot be transferred during the pendency of the running contract…'.* Considering that the TTs operating in the existing contract whose ownership cannot be transferred during the pendency of the running contract, the said corrigendum was introduced because of the overlapping period of the current contract.

He further argues that clause 7.7 at page 99 of the stay application clearly states that each bidder can submit only one bid and that such bidder cannot submit multiple bids in his individual capacity and also in the capacity of any partnership firm, association of persons or company. The clause incorporates a bar for submission of multiple bids pertaining to capacity. Such condition cannot be construed to be arbitrary and or unreasonable.

Responding to the argument of Mr. Bandopadhyay pertaining to the *'Reserved Trucks Quantities',* Mr. Basu submits that the procedure prescribed is in consonance with the Central Government notification dated 18.08.1994 which clearly provides that in cases where reserved category vacancies are filled up by unreserved category participants, the said vacancies pertaining to SC/ST would be carried forward to the next tender process and as such the appellants contention that the said vacancies pertaining to a reserved category would be permanently lost is misconceived. In support of the arguments, Mr. Basu has placed reliance upon the judgments delivered in the cases of *Michigan Rubber (India) Ltd. vs. State of Karnataka & Ors.,* reported in, *(2012) 8 SCC 216, Sanjay Kumar. Vs. Union of India & Ors.,* reported in, *2020 SCC OnLIne Cal 3297, State of Madhya Pradesh & Anr. Vs. Uttar Pradesh State Bridge Corporation Ltd. & Anr.,* reported in, *(2022) 16 SCC 633. Silppi Constructions Contractors vs. Union of India & Anr.*, reported in, *(2020) 16 SCC 489* and an unreported decision of the Delhi High Court in *Silica Udyog India Pvt. Ltd. vs. Union of India & Ors. WP (C) 5185/2023 delivered on 13th September, 2023.*

Such arguments, as advanced, by Mr. Basu have been adopted by Mr. Mal and Mr. Chatterjee.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

From the schedule rate chart at page 39 of the application it would be explicit that the rate depends on *‘per unit MT’* and since 21 MT TT would be carrying more LPG its BMR is less compared to that of 18MT TT. It is, thus, not a case that the respective OMCs have acted arbitrarily or in a perfunctory manner. No *mala fide* can be attributed to such action and it cannot be stated that the OMCs have acted in a manner which would benefit at a particular party as the costs of OMCs.

The argument of Mr. Bandyopadhyay to the effect that the reservation quota is arbitrary and unreasonable is also not acceptable in view of the fact that the said terms and conditions are in consonance with the directives issued by the Union of India.

Clause 7.7 at page 99 of the stay application needs to be read vis-à-vis the capacity in which a bidder is applying. Each bidder can submit only one bid and the restriction categorized therein does not create any ambiguity and the said clause has been inducted as a reasonable measure intended to prevent monopoly or cartelization. The corrigendum clause at pages 188 and 189 of the stay application was introduced because of the overlapping period of the current contract and cannot be construed as discriminatory.

It is a well-acclaimed proposition of the law that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. Plentitude of pronouncements leaves cleavage in the opinions formed in the respective cases. The contentious issue in the case of *Karanpura (Surpa)* was pertaining to compensation and not as regards terms of a contract. It is not a case that an unusual procedure of dealing with state largess has been adopted or that the rules of the game have been changed in the midst of the tendering process. The facts also do not reveal that the terms of the invitation are tailor-made to suit a particular class or that the OMCs have adopted any pick and choose policy. In view thereof, the judgments delivered in cases of *Ramana Dayaram Shetty (Supra), Meerut Development Authority (Supra)* and *M/s Orient Blackswan Pvt. Ltd.(Supra),* upon which reliance has been placed by Mr. Bandhapadhyay are distinguishable on facts.

Tender matters are not tested by running a fine tooth-comb over the process to discover which *'i'* has not been dotted and which *'t'* has not been crossed. The Court cannot sit in the armchair of the authority and decide whether a more reasonable decision or course of action could have been taken in the circumstances. In cases where two views emerge, the Court cannot interfere even if it feels that one is more logical. In the present case the appellants have failed to establish any *mala fide* or arbitrariness warranting interference.

The learned Single Judge, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the judgment impugned.

Accordingly, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Reetobroto Kumar Mitra, J.) **(Tapabrata Chakraborty, J.)**