



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 70 OF 2024

Maharashtra Tank Lorry Owners
Association, 38, Sewri Co-op.
Industrial Estate, Sewri-Bunder Rd.
Sewri, Mumbai – 400 015.

... Petitioner

Versus

1. Bharat Petroleum Corporation
Limited, Bharat Bhavan,
Ballard Estate, Fort,
Mumbai-400 001.
2. Director-Marketing,
Bharat Petroleum Corporation
Limited, Bharat Bhavan,
Ballard Estate, Fort,
Mumbai-400 001.
3. ED. I and C,
Bharat Petroleum Corporation Ltd.
E Wing, 9th floor, Maker Towers,
Cuffe Parade, Mumbai-400 005.
4. Senior Manager, I and C,
Bharat Petroleum Corporation Ltd.
E Wing, 9th floor, Maker Towers,
Cuffe Parade, Mumbai-400 005.
5. Procurement Leader,
(CPO Marketing-Group 10)
Bharat Petroleum Corporation Ltd.
CPO-M, Sewri Fort Road, Sewri,
Mumbai-400 074.
6. Procurement Manager,
(CPO Marketing-Group 10)
Bharat Petroleum Corporation Ltd.

CPO-M, Sewri Fort Road, Sewri,
Mumbai-400 074.

7. Transport Manager,
Bharat Petroleum Corporation Ltd.
Sector 2, Kharghar,
Navi Mumbai-410 210.
8. I and C-Cordinator,
Bharat Petroleum Refinery,
Mahul, Chembur, Mumbai-400 074.
9. GM I and C, Logistic HQ,
Bharat Petroleum Corporation Ltd.
E Wing, 9th floor, Maker Towers,
Cuffe Parade, Mumbai-400 005.
10. Aggarwal Enterprises
Near Petrol Pump, Dabwali Road,
Kalanwali Dist, Sirsa- 125201
11. Aman Roadlines,
6 Jankalyan Society, Maredia Compound
Near Kokanipada, Masjid kurar,
Malad East, Mumbai 400097
12. Aneeta Roadlies
Room No. B-10, Apna Nagar,
Halav Pool, Hall Road, Kurla West
Mumbai 400070.
13. ANS Transport
5/330-A Mullai Nagar,
Mohanur Road, Namakkal-637001.
14. Arungarariamman Transport,
138/4, 4th Floor, LMR Shopping Arcade,
Salem Road, Namakkal-637001.
15. Avadhesh Transport,
C-304, Ramayan Park Society,
Opp Kaival Complex,

Near Navagam Bus Stand, Dindoli,
Surat, Gujarat-394210.

16. Bhagat Singh & Sons,
365, Sane Guruji Marg Agripada
Mumbai-400011.
17. Ever Green Trailor Service
3/335/1, Vallipuram (Auto Nagar)
Near Ashok Leyland Training Center,
Namakkal-637003.
18. G K Logistics
Group No. 7, Chaw 1 No. 81
Room No. 1974, Near Gurudwara,
Tagore Nagar, Vikroli East
Mumbai-400083.
19. Chaudhary Bulk Carriers
Plot No 61, Gami Industrial Park,
Pawane Navi Mumbai-400705.
20. Garg Trading Co.
Plot No 355, Ward 12/B Tagore Road,
Gandhidham Kutch, Gujrat - 370201.
21. Manasa Enterprise
B-86, APIIC Colony, Hyderabad-500062.
22. MTN Roadlines,
113, Village Jastana Khurd,
Tehsil Dera Bassi, Sasnagar,
Mohhali-40501.
23. NGR Oil Carrier
113, Village Jatsana Khund, Lalru,
SAS Nagar Mohali, Punjab-140501.
24. Shiva Roadlines
Unit No.2. Plot No.7, Sector No.19C,
Vashi, Navi Mumbai-400706.

25. Shri Ganesh Enterprises
Shop No.01. Shubh Kalash CHS,
Plot No.35. Sec No 10E, Kalamboli,
Navi Mumbai – 410218.
26. Shyam Roadlines
Room No.5, Chawl No.9, Pipe Road,
Gurudutt Nagar, Rassiwalla Tabela,
Kurla-400070.
27. T A Roadlines
D/1, Block N, Shram Shanti Building,
Wadala Tarck Terminal, Mumbai 400037.
28. Vaibhav Logistics
No.6/948-A, Velmurugan Towers,
Paramathi Road, Namakkal,
Tamil Naidu – 637001.
29. Vasta Enterprises
603/B, Devashree Park, Bldg,
Kolshet Road, Opp. Canara Road,
Thane West-400607.
30. Aakash Ganga Roadlines
A-101, Kartikya Tower CHS Ltd,
Opp. St. Thomas Church,
Saibaba Nagar, Mira Road East,
Dist Thane-401107.
31. Shree Datta Carriers
C-215, Steel Chamber Tower,
Plot No. 514, Kalamboli,
Navi Mumbai 410218.
32. Raj Bulk Movers
Vashi Plaza Commercial Premises
Cp-Op Societies Limited,
Office No.516. D-Wing, 3rd Floor,
Plot No 80/81, Sec-17, Vashi,
Navi-Mumbai-400703.

33. Hariprabha Roadlines,
Room No.1818, CHL No.62, GR Floor,
Group No.7, Tagore Nagar,
Opp. Bldg No 415,
Near E.E Highway, Vikhroli East,
Mumbai - 400083.
34. Karan Carriers
Shop No. 31, Municipal Corporation Market,
Railway Road, Haridwar – 249401.
35. Progressive Transport Co.
307, Kailesh Espalande,
Lal Bhadur Shashtri Marg,
Ghatkopar West, Mumbai 400086.
36. Sunitha Enterprises
H. No.3-6-521/1, Gharonda,
Surya Udaya Apartments,
Himayath Nagar, Hyderabad,
Telangana - 500029. Respondents

Mr Mahesh Shukla i/b. Ms Sonia Sunil, for the Petitioner.

Mr Nikhil Sakhardande, Senior Advocate a/w Mr R. V. Pawar i/b.
Pragnya Legal, for Respondent-BPCL.

***CORAM : ALOK ARADHE, CJ &
M. S. KARNIK, J.***

DATE : 3rd APRIL, 2025

JUDGMENT (PER M. S. KARNIK, J.) :-

1. The Petitioner – Maharashtra Tank Lorry Owners
Association invoked the jurisdiction of this Court under Article

226 of the Constitution of India thereby prays to quash and set aside the tender notice dated 25th October 2023 as well as quash and set aside the Letter of Intent dated 24th April 2024. The Petitioner seeks a direction to Respondent No.1 - Bharat Petroleum Corporation Limited ('BPCL' for short) to issue fresh tender in consonance with the earlier terms and conditions incorporated in the previous tender.

2. Mr Mahesh Shukla, learned counsel for the Petitioner submitted that BPCL issues tender for providing service of transportation of Bulk Special Petroleum products (MTO/Hexane/SBP) and the members of the Petitioner Association participate in the said bidding. The contract is given to the successful bidders and this contract is for a period of five years. BPCL is engaged in the business of manufacturing and distribution of petrol, diesel and their allied products.

3. Learned counsel for the Petitioner submitted that its members have rendered services, as per the terms and conditions of the contract being awarded to them, for over last 45 years, without any complaint. The process of bidding and thereafter awarding the contract and consequently execution of

the said contract by the successful bidders who are members of the Petitioner Association has been going on smoothly without any hindrance for 45 years. As the tenure of the earlier contract was to come to an end on 31st December 2023, BPCL issued transport tender dated 25th October 2023 by name Tender for Road Transportation of Bulk Special Petroleum products (MTO/Hexane/SBP) by bottom loading tank lorries from BPCL Mumbai Refinery for deliveries to BPCL storage locations and customers. However, by issuing this tender the Respondents have made drastic changes and alterations which are detrimental to the interest of the members of the Petitioner Association.

4. Learned counsel for the Petitioner submitted that the changes made in terms and conditions of the new tender are very stringent and badly affect the members of the Petitioner who are doing business with the BPCL for the last 45 years. A meeting was therefore convened on 2nd November 2023 when the transporters raised their concerns. A request was made to extend the deadline for bidding and it was mutually extended till 25th November 2023.

5. Though the Respondents issued a corrigendum dated 11th November 2023 incorporating some revised clauses, the same did not satisfy the concerns and objections raised by members of the Petitioner Association. Vide corrigendum dated 17th November 2023, the deadline for submitting the tender was extended to 25th November 2023. The Petitioner tried to justify its stand by giving a comparative chart showing the salient features therein. Learned counsel for the Petitioner relied upon the following chart to indicate the drastic difference between the earlier tender and the new tender as well as the demand/requirement of the Petitioner. The chart is as under :-

OLD TENDER	NEW TENDER	Demand/Requirement of the Petitioner
Minimum working and cost was discussed, taken in writing from the Transporters and the rates were finalized accordingly	Not discussed and floated the tender	Minimum working was given in writing on 4/12/23 but not considered in the tender and forcefully called for submission on 9/12/23
1.MS normal tank of 24KL	1.MS & SS tank of 29KL with bottom loading facility and kit cost MS Rs.7,00,000 & SS Rs.14,00,000 extra	Ready to fulfill subject to increase in price to Rs.3.19 RTKM (rate calculated on the basis of increase in cost)
2.BANK GUARANTEE	2.BANK GUARANTEE	It should be like same as existing tender

Rs.1,00,000 per tanker & Rs.5,00,000 maximum	Minimum and maximum is Rs.20,00,000	
4.TOLL It was not reimbursed	4.TOLL No reimbursement	Should be reimbursed (in accordance to POL/ATF tenders), because toll is increasing day by day and tender is valid for 5 years.
6.PRODUCT INSURANCE It was not insured by BPCL	6.PRODUCT INSURANCE No insurance	Insurance is the responsibility of consignor and consignee not of transporter. (Because the consignment value is more than Rs.30 Lakhs)
7.RTKM It was almost correct	7.RTKM Not correct	It should be taken as per vehicle odometer reading and not by google/VTS it always shows shortest route which travel through cities and small roads where HCV vehicles are not allowed. VTS also doesn't work at places with no network (to be checked physically)

6. Learned counsel for the Petitioner submits that the action on the part of the Respondents in altering the terms and conditions in the present tender vis-à-vis the earlier tender/s is

illegal and the same is made unilaterally without taking into consideration the financial capacity of the bidders who have been providing their services to the Respondents since last 45 years. Learned counsel submitted that by introducing such impractical changes in the new tender, BPCL is heavily burdening the members of the Petitioner, both financially and physically. It is submitted that there is no satisfactory justification for imposing such stringent clauses in the new tender. It is further submitted that prior to issuance and incorporation of new stringent terms and conditions, BPCL ought to have made a comparative study or analysis of the financial implications that would be caused to the members of the Petitioner Association. It is further submitted that awarding of letter of intent to Respondent Nos.10 to 36 is in gross violation of the principle of natural justice and fair play and there is a deliberate attempt of pick and choose being made to deprive the members of the Petitioner from participating despite they having extended their services diligently. Though the members of the Petitioner had participated in the bid under challenge, but had not received any communication from BPCL thereby illustrating reasons for rejecting their respective bid.

Learned counsel submitted that entire decision making process is arbitrary and without any justification and hence illegal.

7. Mr Nikhil Sakhardande, learned Senior Advocate for BPCL opposed the Petition. Our attention is invited to the affidavit in reply filed on behalf of BPCL. It is submitted that there is no vested right created in favour of the members of the Petitioner Association and they are not precluded from participating in the tender process. It is submitted that the decision making process is fair and transparent and cannot be said to be arbitrary.

8. Heard learned counsel.

9. For bulk transportation of special petroleum products, which are subject matter of the tender, BPCL has been awarding contracts to eligible agency/s after inviting tenders for past several years. Prior to the issuance of the impugned tender, a tender was issued in the year 2016. The period of contract was five years. The said tender was extended from time to time which was valid up to 30th June 2024. The earlier tender was invited under two bid system for transporting the petroleum products in tank lorries. The general as well as technical terms

and conditions of the said tender were set out in the earlier tender. The terms and conditions are set out in the earlier tender were based on the industry practice and other requirements in the year 2016.

10. In the year 2023, BPCL decided to float the tender inviting bids for award of contracts for bulk transportation of special petroleum products by bottom loading of tank lorries from its Mumbai refinery for delivery to its various locations and customers. The said requirement of inviting tenders for transportation of special petroleum products by bottom loading tank lorries was introduced by Respondent No.1 impleads of and instead of top loading tank lorries in compliance of the directives given by the Maharashtra Pollution Control Board (MPCB). Accordingly, a notice inviting tender ("NIT" for short) was issued on 26th October 2023. The copy of the MPCB direction dated 3rd February 2021 is placed on record. The NIT contains various terms and conditions such as EMD, security deposit, qualification criteria, age of tank lorry, initial emission norm, standard size of tank lorry, benchmark rates etc. The NIT also contains relevant oil industry transport discipline guidelines for transport of bulk petroleum products by road.

The terms and conditions set out in the said tender are incorporated by taking into account the business exigencies and dynamic nature of the industry. This incorporation according to BPCL aims to address evolving market conditions and requirements of the Respondent. In accordance with the terms of the said tender, a pre-bid meeting was held on 2nd November 2023 with the bidders/prospective bidders to explain salient features of said tender, e-tendering process and to provide necessary clarifications if any required. The pre-bid meeting was attended by the prospective bidders including members of the Petitioner. The grievances raised by the prospective bidders in the pre-bid meeting including those of the members of the Petitioner Association by addressing wherever feasible, by revising/incorporating tender clauses in corrigendum dated 11th November 2023. The deadline for submission of the bid was twice extended.

11. As against the requirement of 125 number of tank lorries, BPCL received bids offering lorry tanks much more than 125 in numbers. After receiving the bids from the interested parties, BPCL verified the completeness of the bid documents and thereafter the technical bid evaluation has been carried out

which includes the technical aspects of the bid, including the suitability of the transport vehicle i.e. tank lorry as specified in the said tender. The price bids have been opened and all formalities have been duly finalised. The Letter of Intent was issued upon completion of the scrutiny by BPCL's evaluation committee.

12. To meet the allegations that the certain terms and conditions in the said tender are stringent and not suitable to the members of the Petitioner Association, BPCL submitted that the clauses had to be incorporated considering the industry practice, business exigencies and market dynamics. In the affidavit-in-reply, BPCL says that for a comprehensive understanding of the clauses outlined in the tender and the rationale behind incorporating such clauses is set out in a chart which reads thus:-

Clause Description	Reasoning
Minimum Working and Cost	Respondent no.1 has already established the process of assessment of likely cost incurred which is being followed to workout Bench Mark Rates (BMR) of all transportation tenders and thus not obliged to depend on the consent/validation of any of the existing transporter and/or its association. But despite above, as a

	goodwill gesture, entertaining the request of Petitioner, inputs were sought from the representative of Petitioner for reference. Considering all their validated inputs, the rates were reviewed internally and the BMR rates were found to be falling within the price band given in the said Tender (i.e., lower price band & upper price band).
MS & SS tank of 29KL with bottom loading subject to increase in price to Rs.3.19 RTKM	Due consideration on account of bottom loading related costs have already been factored while working out the BMR. The price/rates sought i.e. Rs.3.19/- was found to be enormously high.
Bank Guarantee Minimum and Maximum is Rs.20,00,000/-	Bank Guarantee is the security deposit and purpose is already spelt out in clause no. 7.6 tender document and the same is subject to review from time to time. Bank Guarantee for transportation of all I&C products on delivery assistance basis was revised to Rs.20,00,000/- per contract w.e.f. September 2021 & became applicable for all of I&C transportation contracts published thereafter.
Payment of Toll	It was clarified during the pre-bid meeting that toll charges would be reviewed whenever a new toll plaza is added or there is a change in toll charges or an existing toll plaza is removed. Such changes however would be subject to validation/proofs and said tender already have provisions that Any changes in enroute toll charges will be appropriately factored & paid/recovered.

Product Insurance	Product transferred into tank lorry will be in the custody of transporter till such time it is delivered to the destination. So, the product responsibility lies with the transporter and hence the insurance required to continue be obtained by transporters as per already prevailing tender terms & conditions.
Extension of timelines	The Tender has been extended three times considering concerns & grievances of transporters, however considering business exigencies further extension was not possible and hence bidders were requested to submit the bids by 09.12.2023.

13. We do not find any illegality or arbitrariness in the terms and conditions incorporated by BPCL in the NIT. Merely because the terms and conditions in the NIT are stringent is no ground to interfere in the tender process if otherwise we are satisfied that the decision has been taken by BPCL considering the market dynamics, business exigencies and other industrial requirement. It is well settled that Respondent-BPCL being the author of the said tender is the best person to understand and appreciate its requirements. The members of the Petitioner Association having participated and executed the contract for the past 45 years does not confer any vested right in them to insist that the terms and conditions in the NIT should be made

to suit their convenience. The members of the Petitioner Association are not prohibited from participating in the bidding process. In fact, BPCL took the views of the bidders into consideration and addressed their concerns wherever it was feasible. The deadline for submitting the bids was also extended from time to time acceding to the request of the prospective bidders which included the members of the Petitioner Association. Against the requirement of 125 number of tank lorries, BPCL received bids offering lorry tanks much more than 125 in numbers. The Letter of Intent has been issued on completion of the scrutiny in favour of the successful bidders. We therefore do not find any merit in this Writ Petition.

14. The Writ Petition is dismissed with no order as to cost.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)