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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3137 OF 2024
WITH
INTERIM APPLICATION (L) NO. 16791 OF 2025
WITH
INTERIM APPLICATION (L) NO. 23397 OF 2024
(NOT ON BOARD)**

SONU Cargo Movers (I) Pvt. Ltd. .. Petitioner

Versus

Oil and Natural Gas Company Ltd.
(Sic. Corporation Ltd.) (ONGC) & Ors. .. Respondents

Mr. Rohan Kadam with Ms. Rucha Vaidya, Mr. Ketan Joshi, Mr. Vishwajeet Mohite i/by Mr. Siddharth R. Karpe for petitioner.

Mr. Kevic Setalvad, Senior Advocate with Mr. Akash Jain and Mr. Gaurav Edekar i/by Mansukhlal Hiralal & Co. for respondent no.1/applicant in IAL/16791/2025.

**CORAM: ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.**

DATE: 21st AUGUST, 2025

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ORAL ORDER [Per Chief Justice]:

1. In this petition under Article 226 of the Constitution of India, the petitioner has assailed the validity of the decision dated 31st May, 2024, by which the technical bid submitted by the petitioner has been rejected by the Oil and Natural Gas Corporation Limited (hereinafter referred to as "the Corporation") on the ground that the petitioner does not fulfill the essential eligibility criteria as prescribed under Clause 2.1(a)2 of the Notice Inviting Tender. Petitioner also challenges the decision dated 4th June, 2024, by which its representation has been rejected. By amending the petition,

petitioner has also set up a challenge to Notice of Award dated 13th June, 2024 in favour of respondent no.2, Notice of Award dated 27th June, 2024 in favour of respondent no.3 as well as the work orders issued to respondent nos.2 and 3 on 5th May, 2024 and 24th July, 2024.

2. In order to appreciate the grievance of the petitioner, relevant facts need mention, which are stated infra.

3. The Corporation, on 20th December, 2023 had invited bids for "Hiring of Services for All India Material Transportation through Trucks and Trailers for a period of 3 years (2024-2027)". The last date for submission of bid was 27th December, 2023. However, by a corrigendum, the last date of submission of bid was extended to 30th January, 2024. Thereafter, by another corrigendum dated 20th February, 2024, the last date for submission of bid was postponed to 12th March, 2024. The petitioner submitted its bid on 12th March, 2024 and submitted details of its trucks with requisite capacity. The National Permit of one of the quoted trucks had expired on 3rd December, 2023, but petitioner had applied for renewal of the permit on 11th March, 2024. After submission of the bid on 12th March, 2024, the National Permit in respect of the truck bearing Registration No.GJ12BW 2535 was renewed by Gujrat RTO on 14th March, 2024. Thereafter, the Corporation, by a communication dated 12th April, 2024 required the petitioner to submit various other documents, including a valid national permit as on the date of opening of technical bid, i.e., 12th March, 2024 in respect of Truck bearing No.GJ12BW 2535. Petitioner submitted the same on 18th April, 2024.

4. Thereafter, by another communication dated 9th May, 2024, the petitioner was again required to submit a copy of valid national permit as on the date of opening of technical bid, i.e., 12th March, 2024, digitally signed and validated. In response to the aforesaid communication, the petitioner once again submitted the renewed National Permit. However, by communication dated 31st May, 2024, petitioner was informed that it did not have the valid National Permit in respect of Truck No. GJ12BW 2535 on the date of opening of technical bid, i.e., 12th March, 2024 and, thus, does not fulfill the requirement as laid down in Clause 2.1(a)2. In the aforesaid factual background, instant writ petition has been filed.

5. Mr. Rohan Kadam, the learned counsel for the petitioner submitted that the national permit in respect of the vehicle in question had expired on 3rd December, 2023. The petitioner, however, submitted the application on 11th March, 2024 seeking renewal of the national permit, which is renewed on 14th March, 2024. It is, therefore, contended that by operation of Section 81(5) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), the national permit was deemed to have been renewed from the date of its expiry since 3rd December, 2023. Therefore, action of rejection of technical bid of the petitioner is arbitrary and irrational. It is also contended that full effect has to be given to a legal fiction. In support of the aforesaid submissions, learned counsel for the petitioner placed reliance on the decisions of the Supreme Court in ***Tata Cellular vs. Union of India, (1994) 6 SCC 651*** and ***Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. & Ors., (2003) 2 SCC 111***.

6. Mr. Kadam would further submit that the Corporation itself had issued the communications on 12th April, 2024 and 9th May, 2024, by which the petitioner was required to submit the valid national permit. It is further submitted that since the petitioner had submitted the duly renewed national permit, therefore, it was not open for the Corporation to subsequently reject the technical bid of the petitioner on the ground that the petitioner did not fulfill the requirement laid down under Clause 2.1(a)2. It is also contended that a small deviation in condition laid down in eligibility criteria is immaterial and on such a ground, the bid of the petitioner could not have been rejected. In support of the aforesaid submission, learned counsel for the petitioner placed reliance on the decisions of a Division Bench of Nagpur Bench of this Court in **Messrs. B. Himmatlal Agrawal vs. Western Coalfields Limited & Anr. (Writ Petition No. 2533/2010 rendered on 10th August, 2010)** and a Division Bench of High Court of Allahabad in **Gorakhnath Upadhyaya vs. State of U.P. & Ors., AIR 1994 All 283**. However, it is fairly submitted by the learned counsel for the petitioner that before grant of ad-interim order passed by this Court on 1st July, 2024, the work in ratio of 60% and 40% respectively was awarded on 14th June, 2024 and 28th June, 2024 to the L1 and L2 bidders. It is submitted that the petitioner had offered lower rate than L2 bidder and, therefore, is entitled to grant of atleast 40% of the work.

7. On the other hand, Mr. Setalvad, the learned senior advocate for the Corporation submitted that the criteria laid down in Clause 2.1(a)2 of the Notice Inviting Tender was an

essential eligibility criteria and it is not permissible for the Corporation to make any deviation from the essential eligibility criteria. It is also contended that the conduct of the petitioner dis-entitles it to any discretionary relief in exercise of powers under Article 226 of the Constitution of India. It is also contended that the L1 and L2 bidders are performing the contract for past about 14 months. It is further contended that the decision taken by the Corporation is in consonance with the essential eligibility criteria, which by no stretch of imagination can be termed as arbitrary or irrational as the same is plausible view in the facts and circumstances of the case.

8. We have considered the submissions made on both sides and have perused the record.

9. The conditions in the tender notice can be classified into two categories. The first category may lay down the essential conditions of eligibility and the others, which are merely ancillary or subsidiary with the main object to be achieved by the condition. In case of first category of conditions, the authority issuing the tender may be required to enforce them rigidly and it will not be open for the authority to make any departure from the same [See **G. J. Fernandez vs. State of Karnataka & Ors., (1990) 2 SCC 488** and **Poddar Steel Corporation vs. Ganesh Engineering Works, (1991) 3 SCC 273**].

10. It is not in dispute before us that Clause 2.1(a)2 of the Notice Inviting Tender is an essential eligibility criteria. For the facility of reference, the aforesaid Clause is extracted below: -

" 2.1(a)2. Ownership Criteria :

Bidder must have a minimum of following fleet in its name (ownership shall be clearly established by endorsements in the RC and copy of the RC must be submitted along with the Techno – Commercial Bid)

a. Minimum 10 nos. of trailers of a minimum carrying capacity of 20 MT each if quoted for trailer transportation i.e. Group-1/2 of Trailer.

b. Minimum 10 nos. of trucks of a minimum carrying capacity of 9 MT each if quoted for truck transportation i.e. Group-1/2 of Trucks.

c. Minimum 10 nos. of trailers and 10 nos. of trucks with minimum carrying capacity of 20 MT and 9 MT respectively if quoted for both trailer and truck transportation i.e., for Group 1/2 of Trucks and Group 1/2 of Trailer.

The trailers and trucks owned by the bidder as above should have valid National Permit as on date of original TBO and should submit the same along with the techno commercial bid."

11. Thus, from the perusal of the aforesaid essential eligibility criteria, it is evident that the trailers and trucks owned by the petitioner, as above, should have a valid national permit as on the date of opening of technical bid and shall submit the same along with techno commercial bid. The judgment of this Court in **Messrs B. Himmatlal Agrawal** (Supra) and Allahabad High Court in **Gorakhnath Upadhyaya** (Supra) are in respect of ancillary tender conditions and have no application to the facts of present case.

12. In the instant case, the tender was issued on 20th December, 2023 and the last date for submission of the bid was 28th December, 2023. The National Permit in respect of the concerned truck had expired on 3rd December, 2023, but petitioner did not take any steps for its renewal even after

noticing 28th December, 2023 as the last date for submission of bids. By a corrigendum, the last date for submission of bid was extended to 9th January, 2024 and thereafter by another corrigendum dated 20th February, 2024, the same was extended to 12th March, 2024. The national permit issued in favour of the petitioner in respect of vehicle No.GJ12BW 2535 had expired on 3rd December, 2023. The petitioner, thus, did not have a national permit in respect of aforesaid vehicle on the last date of submission of the bid, i.e., 12th March, 2024. The petitioner submitted its bid on 12th March, 2024. The petitioner applied for renewal of national permit on 11th March, 2024. The same was renewed on 14th March, 2024. Along with the bid, the petitioner did not submit the national permit in respect of vehicle No. GJ12BW 2535. Therefore, vide communications dated 12th April, 2024 and 9th May, 2024, the Corporation required the petitioner to submit a valid national permit which was validated as on the date of opening of the technical bid. The requisition made vide said communications was for submission of National Permit which was valid as on 12th March, 2024. Thus, from the narration of aforementioned facts, it is evident that the petitioner waited till the last day of extended date of submission of the bid and applied for renewal of permit on 11th March, 2024 and submitted its bid on 12th March, 2024. After perusal of the national permit submitted by the petitioner, the Corporation came to a conclusion that the petitioner was not having valid national permit as on the date of opening of technical bid, i.e., on 12th March, 2024. Therefore, the technical bid of the petitioner has been rejected.

13. Even though Section 81(5) of the Act provides for renewal taking effect from date of expiry of permit, the same does not mean that the tendering authority was required to undertake an interpretative exercise by referring to Section 81(5) of the Act. The tendering authority is not a legal expert. It is not supposed to go into the aspect of legal fiction under Section 81(5) of the Act while deciding eligibility of bidders. Also of relevance is the fact that while submitting the renewed permit vide letter dated 18th April, 2024 (in response to Corporation's letter dated 12th April, 2024), petitioner did not refer to the legal fiction under Section 81(5) of the Act and plainly submitted the renewed permit. Again after receipt of another requisition on 9th May, 2024, petitioner again submitted copy of renewed permit vide response dated 14th May, 2024. The tendering authority was thus not even made aware about the legal fiction under Section 81(5) of the Act. Therefore, reliance of petitioner on Apex Court judgment in ***Bhavnagar University*** (Supra) is inapposite. Once the essential tender condition required submission of valid National Permit as on 12th March, 2024, the bidders were required to scrupulously meet the said condition. Upon noticing that the permit of one of the trucks was not valid as on 12th March, 2024, the tendering authority is justified in rejecting petitioner's bid. The decision cannot be treated as arbitrary or *mala fide*.

14. It is well settled in law that this Court does not sit as Court of appeal over a decision taken by a tender inviting authority to merely review the manner in which the decision

was made. The decision taken by the Corporation, by no stretch of imagination, can be said to be either arbitrary or irrational warranting interference of this Court in exercise of powers under Article 226 of the Constitution of India. It is in consonance with the essential eligibility criteria laid down in Clause 2.1(a)2 of the Notice Inviting Tender.

15. The conduct of the petitioner also does not commend us. Despite being aware of the fact that the permit had expired on 3rd December, 2023, petitioner did not take any steps in getting the permit renewed for more than three months and took a calculated chance by applying for renewal only on 11th March, 2024 when the last date for submission of bids was 12th March, 2024.

16. It is also pertinent to note that prior to grant of an ad-interim order on 1st July, 2024, tender works were already awarded in favour of L1 and L2 bidders on 14th June, 2024 and 28th June, 2024. The L1 and L2 bidders are performing the contract for past about 14 months. The petitioner is not L1 bidder. The petitioner submitted its bid on the extended date and got its national permit renewed on 14th March, 2024, which is a fortuitous circumstance which happened subsequent to the date of opening of the technical bid.

17. For the aforementioned reasons, no case for interference in exercise of powers of judicial review under Article 226 of the Constitution of India is made out. In the result, writ petition fails and is hereby dismissed.

18. Interim Applications, if any, do not survive and shall stand disposed of accordingly.

(SANDEEP V. MARNE, J.)

(CHIEF JUSTICE)