(2009) 06 GUJ CK 0031

In the Gujarat High Court

Case No : Special Civil Application No. 5694 of 2009

C.M. Thacker and Others APPELLANT

Vs

Union of India (UOI), Secretary and Another RESPONDENT

Date of Decision : 23-06-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 06 GUJ CK 0031

Hon'ble Judges : Mohit S. Shah, J;K.M. Thaker, J

Bench : Division Bench

Advocate : D.C. Dave, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Mohit S. Shah, J.—In this petition, under Article 226 of the Constitution, the petitioners, nine in number, have challenged the terms &

conditions of a Tender Notice No. LPG/OPS/TT(WR)2009 dated 1st June, 2009.

2. Indian Oil Corporation Limited, a public sector enterprise (respondent No. 2 herein), issued a Tender Notice on 1st June, 2009 inviting sealed

tenders under single bid system (credential cum price bid) from tenderers, who are willing to accept the rates indicated in Annexure II to the

tender, who own atleast one LPG tanker in operating condition for award of separate contracts for 72 LPG trucks for Western Region for

transportation of bulk LPG by road from various loading locations as mentioned in the tender to various bottling plants/customers of I.O.C. for the

period upto 31st October, 2010 and thereafter, for extension of one year i.e. 31st October, 2011 at the sole discretion of the I.O.C. Annexure II

to the tender specifies the rates termed as Industry Lowest Rates in the tender notice. By way of illustration, the rates for some of the sectors are as under:

Rate Schedule

Sr. No. Sector Unit Rate

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1. Kandla-Within State (WS) Ps. MT/RTKM 167.77

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2. Kandla-Inter State (IS) Ps. MT/RTKM 161.77

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14. Vijaipur (IS) Ps. MT/RTKM 161.77

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21. Mangalore (IS) Ps. MT/RTKM 161.77

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22. Mathura (IS) Ps. MT/RTKM 161.77

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26. GANDHAR (GAIL/ONGC) Gandhar Plant Rs/MT 150.74

The party submitting the tender is also required to state as under:

6. We unconditionally accept the above industry lowest rates for all sectors offered by IOCL & terms and condition of tender in TOTO.

The condition Nos. 3 and 4 of the tender reads as under:

3. All tenderers including those belonging to SC/ST category, must own minimum one LPG tank truck registered in his/her name, licensed and

operational on the closing date of the tender. The tenderers, should offer only those tank trucks, which are duly licensed for LPG, in operating

condition, and registered in their name or attached to them on the closing date of the tender. Subject to meeting all terms and conditions, tenderers

who are willing to accept Industry Lowest Rates IN TOTO for all Sectors offered as per Annexure II only will be qualified and eligible for award

of separate contracts for 72 Nos. LPG Tank Trucks for Western Region for transportation of bulk LPG by road. No tenderer will be allowed to

Counter offer rates either lower/higher than offered above lowest rates and any such tenderer not accepting lowest rates in TOTO will be

disqualified and not eligible for award of contract.

4. Everything being equal, preference would be given in the following order while awarding Contract:

a) Owned tank trucks (multi-axle) of latest model eligible for National permit as per Clause 88(2) of CMV Act 1989 as on 31.10.2010.

b) Owned tank trucks (other than multi-axle) of latest model eligible for National permit as per Clause 88(1) of CMV Act 1989 as on

31.10.2010.

c) Attached tank trucks (multi-axle) of latest model eligible for National permit as per Clause 88(2) of CMV Act 1989 as on 31.10.2010.

d) Attached tank trucks (other than multi-axle) of latest model eligible for National permit as per Clause 88(1) of CMV Act 1989 as on

31.10.2010.

e) Owned tank trucks of latest year model.

f) Attached tank trucks of latest year model.

g) The higher carrying capacity of tank trucks i.e. the tank truck with larger approved payload capacity.

Note: For point No. 4 a) to f) in case of same year model, the date of first registration will be taken into account, and if date of registration is not

written or not clear, then 1st January of that particular model year shall be taken.

3. The contention raised by the petitioners is that by not giving any option to the tenderers to offer lower rates, respondent No. 2 Corporation is

acting arbitrarily. It is submitted that the party offering to transport LPG at the rate of Rs. 167.77 ps from Kandla within the State will steal over a

march merely by having a tanker of 2009 model as against some of the petitioners who are ready to offer to transport LPG at the rate of Rs.

159.38 ps from Kandla within the State. It is submitted that in this manner, there will be a loss to the public exchequer.

4. In the first place the tender papers were available with the petitioners from 1st June, 2009 and the petition has been moved for urgent hearing

today and it is stated by the learned advocate for the petitioners that the I.O.C. is about to take a decision and the decision will be taken within a

day or two. If the petitioners were aggrieved by the terms & conditions, it was open to them to file the petition well in time. The petition is filed at a

stage when even issuance of notice would create uncertainties and the entire process of awarding contracts for transporting LPG would be

delayed.

5. Even on merits, the petition does not deserve to be entertained because what the petitioners are essentially seeking to do is to challenge the

terms & conditions of the tender. As per the settled legal position, this Court is not to interfere with the terms & conditions of the tender, unless the

terms & conditions are set out with malafide intention.

6. Learned advocate for the petitioners has submitted that there is no rationale or object underlying the impugned policy. Learned advocate for the

petitioners has invited our attention to paragraph 6 of the petition which reads as under:

6. At this juncture, apropos and in furtherance of the aforesaid, it deserves to be mentioned that, ordinarily, when the rates to be mentioned in the

concerned bid are provided for in the tender itself, with the stipulation that the rates, other than the said rates, being either higher or lower, would

not be permitted to be quoted in the concerned bid, the concerned bidder, who is in a position to offer lower rates if put to competition would

never have objection to such a provision in the tender. However, in the present case, in the said tender, the provisions of the aforesaid nature has

been made with a design, to favour some transporters, having an influencing lobby in the set up of Respondent No. 2, as it would become evident

from the facts set out hereinbelow and, hence, the Petitioners have been constrained to institute the present petition.

7. Apart from the fact that the allegation is vague, it cannot be said that the impugned policy is malafide. As already discussed above, condition

No. 4 of the tender sets out the priorities. The Corporation is giving priority to efficiency over possible economy. Whether the Corporation should

get its LPG transported in a tanker of 2005 model at the rate of 167 ps per MT or at the rate of 159 ps per MT in a tanker of 2001, is a business

decision. This Court would not sit in appeal over such decision. It amounts to interfering with the terms & conditions of the tender, which is not

permissible.

8. In the case between B.S.N.L. Ltd. and Another Vs. Bhupender Minhas and

Others, the Hon''ble Apex Court has observed that:

It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of

contract. That the Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary

concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is

arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular

circumstances. The courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the

tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide.

9. From bare perusal of the terms & conditions of the tender, it appears that the I.O.C. has attached importance to latest model of the tanker i.e.

efficiency of the tanker rather than saving in the rates by a few paise here and there. All that the petitioners are seeking in essence, is change in the

policy of the I.O.C. in determining the terms & conditions of the tender. As per the settled law, this Court is not to sit in appeal over the decision of

the authority in such policy matters. On this ground alone, we are not inclined to entertain this petition.

10. In view of the above discussion, the petition is summarily rejected.