(2015) 05 P&H CK 0266

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6071 of 2015

Ekam Transport	APPELLANT
Vs	
Indian Oil Corporation Ltd. and Others	RESPONDENT

Date of Decision : 25-05-2015

Acts Referred:

Citation : (2015) 05 P&H CK 0266

Hon'ble Judges : Hemant Gupta, J;Lisa Gill, J

Bench : Division Bench

Advocate : Jagdeep Bains, for the Appellant; Ashish Kapoor, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.

1. Challenge in the present writ petition is to the rejection of technical bid of the petitioner in respect of tender of ''Road Transportation of Bulk Petroleum Product, Ex-Jalandhar, Punjab'' and to set aside the order dated 19.03.2015 (Annexure P-6), whereby a representation against the awarding of contract to other transporters was declined.

2. The Indian Oil Corporation Limited (hereinafter to be referred as ''IOC'') published a tender notice inviting bids through e-tender for ''Road Transportation of Bulk Petroleum Products - Motor Spirit (MS)/High Speed Diesel (HSD)/Branded Fuels Ex. Location - Jalandhar''. The bids were invited in two parts i.e. technical bids and the financial bids from Tank Truck (TT) owners for the period commencing from 31.03.2015. The condition in the tender notice is that the transporters are required to offer 5 TTs out of which 3 TTs must be owned by it and 2 TTs must be of at least 11 KL and 18 KL capacity each. There was another condition that the willing tenderers should have all the valid documents such as registration certificates of all the TTs at the time of submission of bids as also the explosive licenses issued by respondent No. 4.

3. Pursuant to such tender notice, the petitioner - M/s. Ekam Transport, stated to be owner of 42 TTs, submitted its bid in view of its past experience as bulk petroleum product transporter since the year 1985, on 08.12.2014 well before the closing time of the tender i.e. 11.12.2014 at 1100 hours, which was later on extended to 26.12.2014 vide separate corrigendum. The petitioner asserts that its technical bids were not accepted, but the bids of other transporters have been accepted. The petitioner further asserts that out of 42 TTs offered by it, 41 TTs were found in order and, thus, it fulfilled the criteria for the grant of contract.

4. It is also pleaded that total number of TTs required for the contract in question was 420, whereas technically qualified TTs offered were 476. Out of such 476 TTs, 267 TTs were of Retail Outlet (RO) Dealers, who had got a preferential right of grant of contract. Therefore, it is argued that the petitioner has been dealt with arbitrarily, illegally and in unreasonable manner, when the technical bid of the petitioner is rejected.

5. In the reply filed on behalf of the IOC, it is pointed out that evaluation was done in terms of Clauses B4 to B13 of the terms and conditions of the Tender. The bidders were divided into two categories i.e. (1) RO Dealers - (i) SC (ii) ST (iii) MSME (iv) General; and (2) General Tenderers - (i) SC (ii) ST (iii) MSME (iv) General. It is further pointed out that after exhausting the quota of TTs of reserved categories i.e. RO Dealers and Scheduled Castes (SC), Scheduled Tribes (ST) and Micro and Small Enterprises (MSEs) of General Tenderers, 67 TTs remained to be selected. Such TTs were required to be selected from the remaining 3 General category bidders i.e. M/s. Mehra Oil Carrier, M/s. Sahib Oil Carrier and the petitioner. It is also pointed out that in terms of clause 9(B) of the Tender Terms and Conditions, 39 TTs of M/s. Mehra Oil Carrier having average fleet age of 1575 days and 27 TTs of M/s. Sahib Oil Carrier having average fleet age of 1902 days were selected. The petitioner''s TTs with the average fleet age of 1980 days could not be selected, in view of the tender conditions.

6. On 12.05.2015, learned counsel for the petitioner raised an argument that the other two bidders i.e. M/s. Mehra Oil Carrier and Sahib Oil Carrier were allowed to exclude older TTs while calculating the average fleet age, whereas the petitioner was not granted such benefit. On the basis of such argument, counsel for the IOC sought some time to file an additional affidavit. In the additional affidavit filed, it has been pointed out that M/s. Mehra Oil Carrier offered 42 TTs out of which 3 TTs were not found to be qualified. The non-qualified TTs were manufactured in the year 2008 and 2010. In respect of M/s. Sahib Oil Carrier, 42 TTs were offered with the average age of 1902, but after allocating 39 TTs to M/s. Mehra Oil Carrier, the requirement was of 27 TTs, which contract was awarded. It is pointed out that even if the oldest TTs, 27 TTs are excluded, the average fleet life is of 1297. The average fleet life of the Petitioner''s balance 27 TTs by excluding the oldest TTs was 1340. It is stated that the procedure for calculating the average age of younger TTs is not contemplated in the Tender, but the

average fleet age of the TTs offered by the petitioner are older in age than of M/s. Sahib Oil Carrier and M/s. Mehra Oil Carrier.

7. Before examining the arguments raised, the relevant terms and conditions from the Tender (Annexure P-1) needs to be extracted. The same are as under:

"TENDER TERMS and CONDITIONS

A. GENERAL:

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12. Age (as mentioned in RC book) of Tank Truck offered shall be as prescribed by Local Laws and in any case shall not exceed 15 years as on the closing date of tender submission. In case only year of manufacturing is mentioned in the RC book, the age should be reckoned from 1st January of the year of manufacturing. In case both month and year of manufacturing is mentioned in the RC book, the age should be reckoned from 1st day of the month of Manufacturing. The Tank Trucks attaining the age of 15 years during the contractual period shall be removed from the contract. Replacement within 30 days with another eligible Tank Truck having age of less than 15 years shall be the responsibility of the concerned transport contractor. Dispensation beyond 30 days can be with the specific approval of the State Operations Head.

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B. Evaluation of the tenderers:

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9. In case, for a particular ranking, Tank Trucks offered are more than the requirement, then the tenderers in that particular ranking shall be further ranked based on the following order of priority and allocations shall be made only till such time the full requirement of Tank Trucks is met. The tenderers who are ranked lower in that particular ranking may not get any allocation.

(i) Tank Trucks offered by RO Dealer/Direct Customer.

(ii) Average age of the fleet.

(iii) Maximum number of owned TTs offered.

(iv) Maximum number of TTs offered by the tenderer.

(v) Tenderer offering highest number of 18 KL and above TTs.

xxx xxx xxx"

8. Learned counsel for the petitioner vehemently argued that the older TTs from the offer of the petitioner could be ignored, then the average fleet life of the TTs offered by the petitioner would be less than that of M/s. Sahib Oil Carrier. Therefore, the grant of contract to M/s. Sahib Oil Carrier is unfair action on the

part of the respondents.

9. We have heard learned counsel for the parties at length and find no merit in the present writ petition. We find that the argument raised on behalf of the petitioner is based upon assumption i.e. certain TTs should have been excluded by the IOC while evaluating the tender of the petitioner. We find that once the petitioner has offered particular number of TTs, the same could not be varied by the respondents in any manner unilaterally. In respect of M/s. Mehra Oil Carrier, 3 TTs could not qualify the technical bid, therefore, the same were not taken into consideration for any purpose. Such TTs were younger in age. While excluding such TTs, the average fleet age of 39 TTs is 1575, which is less than the average age of 1902 in respect of M/s. Sahib Oil Carrier and 1980 in respect of the petitioner. Therefore, the contract has been rightly given to the other two bidders in terms of the tender terms and conditions.

10. The Retail Outlet Dealers/Direct Customer are the preferred category falling in the first rank in terms of sub-clause (i) of clause 9 of Part -B of the Tender Terms and Conditions. Sub-clause (ii) is the next category to be awarded contract on the basis of the average age of the fleet. TTs of the petitioner have average age of 1980 days as against 1902 days of M/s. Sahib Oil Carrier and 1575 of M/s. Mehra Oil Carrier. Thus, in terms of sub-clause (ii) of Clause 9 of Part - B of the Tender Terms and Conditions, the bidder having TTs with least average age is to be granted contract. Thus, the petitioner cannot make any grievance regarding award of contract to the other transporters having better average life.

11. Learned Counsel for the petitioner then relied upon sub-clause (iii) of Clause 9 of Part - B relating to maximum number of owned TTs offered, to contend that since the petitioner owns 42 TTs, therefore, the petitioner has a preferential right for awarding the contract.

12. We do not find any merit in the said argument as well. Each of the five ranks in Clause 9 of Part - B are independent category. The allotment from the next rank will arise for consideration only if there are not enough TTs from the previous category. Therefore, as against the requirement of 420 TTs, 267 TTs were offered by the RO Dealers/Direct Customer falling in sub-clause (i) of Clause 9. In terms of Part - V of the notice inviting tender, the provisional reservation is 15% and 7 1/2 for Scheduled Castes and Scheduled Tribes respectively on all India basis. 20% of the TTs reserved for Micro and Small Enterprises (MSEs). Thus, only 67 TTs were available for allotment amongst the general category candidates such as petitioner. Such TTs have to be allowed as per sub-clause (ii) of Clause 9 of Part - B failing which the person in the next rank would come within zone of consideration. The extent of TTs owned and offered is the next category under which the TTs can be considered only if there were not enough TTs in the previous sub clauses (i) and (ii).

13. We find that the decision making process, while examining the grant of

tender, cannot be said to be unfair and untenable. There could be other possible methods of awarding contract, but since the tender contemplated a particular method of allotment, which method has been applied uniformly to all the tenderers, we do not find that such decision making process suffers from arbitrariness and unreasonableness, which may warrant any interference by this Court in exercise of its writ jurisdiction.

14. Consequently, the present writ petition is dismissed.