

(2016) 10 P&H CK 0180
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 21772 of 2016.

**M/s. Dhillon Roadways - Petitioner @HASH Indian Oil Corporation Ltd.
and another**

Date of Decision : 20-10-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 199, Article 226

Citation : (2017) 1 RCRCivil 493

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Ashok Gupta and Eklavya Gupta, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Ramendra Jain, J. - Vide Annexure P-1, respondent No.1, Indian Oil Corporation Limited (IOCL) invited e-tenders under Two-Bid system from Tank Truck owners for award of contracts for road transportation of bulk petroleum products with effect from 01.02.2016 for a period of three years with option for extension up to further two years at its sole discretion. Closing date and time of the tender was 23.12.2015 at 11.00 AM and the same was to be opened on 24.12.2015 at 11.00 AM. The petitioner firm submitted its bid on 22.12.2015. The petitioner received an e-mail dated 19.05.2016 (Annexure P-4) directing it to approach the officers of respondent No.1 Company for verification of documents as per tender. The verification was to be completed by 31.05.2016. Thereafter, the petitioner received another e-mail dated 08.07.2016 (Annexure P-5) from the respondents, directing it to upload the relevant documents at the earliest, but not later than 16.07.2016. On the same very day, i.e. on 08.07.2016, the petitioner uploaded all the relevant documents. Accordingly, vide e-mail dated 08.07.2016 (Annexure P-6), the respondents admitted the bid of the petitioner after duly verifying the documents. Thereafter, the petitioner received another e-mail dated 11.07.2016 (Annexure P-9) from the respondents whereby again the documents were directed to be uploaded through e-mail, not later than 16.07.2016. The respondents also asked the petitioner firm to send one of its representative for verification of pre-qualification documents as per tender with the originals at

Location Ambala Terminal within next three working days after 16.07.2016.

2. The case of the petitioner is that the similarly situated bidders were issued a letter through e-mail dated 19.08.2016 (Annexure P-7) asking them to give extension of bid validity for another 60 days i.e. upto 18.10.2016. However, the said communication was not sent to the petitioner. Thereafter, vide e-mail dated 19.08.2016, the petitioner uploaded the application dated 11.12.2015 (Annexure P-3) and the certificate dated 01.01.2016 (Annexure P-8) duly issued by the State Transport Authority, under the Haryana Carriage by Road Act, 2007 (hereinafter referred to as 'the Act of 2007'). In this way, the petitioner firm completed all the prerequisite conditions, but was shocked when it received e-mail dated 23.08.2016 (Annexure P-10) informing it regarding rejection of its tender during technical evaluation by the duly constituted committee for the reasons "Not meeting PQC". The petitioner firm had filed CWP No. 19010 of 2016 before this court challenging the said e-mail/order dated 23.08.2016 (Annexure P-10), which was disposed of vide order dated 14.09.2016 (Annexure P-11) directing the respondents to decide representation of the petitioner, if filed within a week from the date of receipt of certified copy of the order, within a period of next one week by passing a speaking order and after affording an opportunity of hearing to the petitioner, in accordance with law. In pursuance of the said order, the petitioner submitted a representation dated 19.09.2016 (Annexure P-12) to the respondents raising all the pleas. Accordingly, General Manager (Contract Cell), Northern Region, Indian Oil Corporation, New Delhi, afforded an opportunity of hearing to the petitioner firm on 29.09.2016, and vide order dated 12.10.2016 (Annexure P-14) rejected its representation without discussing the pleas raised by it.

3. Hence, by way of the present writ petition under Articles 226/227 of the Constitution of India, the petitioner firm has sought issuance of a writ in the nature of certiorari for quashing the aforesaid e-mail/order dated 23.08.2016 (Annexure P-10) rejecting its tender for the reasons "not meeting PQC", and the order dated 12.10.2016 (Annexure P-14), rejecting its representation against the said e-mail/order. Further prayer has been made to issue a writ in the nature of mandamus directing the respondents to consider the bid/tender of the petitioner, on the following grounds :-

(i) All the pleas raised by the petitioner have neither been discussed nor any finding has been returned on the same;

(ii) The bid of the petitioner firm could not have been ignored for the simple reason that it did not possess the required certificate of registration on 23.12.2015, i.e. the closing date of the tender, in view of the fact that the respondents themselves failed to adhere to their own schedule of the tender and sought extension of the same on 19.08.2016;

(iii) The respondents cannot be permitted to reject the claim of the petitioner firm at such a belated stage, in view of the fact that its tender was opened on

08.07.2016 and was admitted as per email dated 08.07.2016 (Annexure P-6). The petitioner also submitted its certificate dated 01.01.2016 fulfilling all the terms and conditions of the tender;

(iv) The respondents have wide power of relaxation of certain terms and conditions of the tender, because in the similar situation, they had earlier relaxed the clause requiring certificate under the Act of 2007 in tender dated 04.08.2015.

4. Learned counsel for the petitioner contended that the closing date of the tender was 23.12.2015 and tenders were to be opened on 24.12.2015, but the respondents opened the same very belately, after approximately eight months. Since the petitioner firm had already submitted its certificate of registration dated 01.01.2016 prior to the opening of the tender, and its tender was also admitted by the respondents, therefore, rejection of its bid was illegal and arbitrary. Even otherwise, the respondents had earlier relaxed the condition of submission of certificate of registration of transporters/dealers, therefore, they have vast power to relax the said condition, which was merely a formality. In similar situation, the Hon'ble High Court of Calcutta in WP No. 3506 (W) of 2015, titled as SN Bose & Company v. IOCL, dismissed the writ petition while accepting the stand of the respondents that they had rightly relaxed the clause of submission of certificate of registration under the Act of 2007.

5. We have thoughtfully considered the submissions made by learned counsel for the petitioner and do not find any substance in the same.

6. It is not disputed that there was a pre-requisite condition of the applicant to submit certificate of registration at the time of submission of the bid. Admittedly, the petitioner firm did not submit its certificate of registration at the time of submission of its bid on 23.12.2015, rather it submitted the same on 19.08.2016, despite the fact that opening date of the bid was 24.12.2015. Though the tenders could not be opened on 24.12.2015 and were opened after approximately eight months, but the same by itself does not give any right to the petitioner to claim that its late submission of registration of certificate should have been considered by the respondents. There might be various reasons for opening tenders at a later stage by the respondents. A perusal of the impugned order dated 12.10.2016 (Annexure P-14) passed in pursuance to the direction of this court vide order dated 14.09.2016 (Annexure P-11) passed in CWP No. 19010 of 2016 of the petitioner, shows that the General Manager (Contract Cell), Northern Region, Indian Oil Corporation, New Delhi, has dealt with all the pleas raised by the petitioner before him. For brevity, the relevant paras of the impugned order are re-produced below : -

"(a) The requirement of carriage registration was one amongst the pre-qualification criteria documents (Refer Sl 4 at page 4/100) and requirement has been spelled out in tender that All transporters/dealers should have valid certificate of registration in line with Carriage by Road Rules, 2011, released by Ministry of Road Transport and Highways vide Gazette Notification of India dt.

28.02.2011 (refer Sl. 7 at page 5/100). The details of the same has been asked from bidders vide Sl 2 Pre-Qualification details under "Particulars of tenderers" at page 16/100 of the tender.

(b) To maintain sanctity of tender with respect to the eligibility of bidders as per PQC documents, a cutoff date/closing date is fixed, accordingly the bidders should fulfill all the eligibility criteria on the date of submission of the bid/closing date tender and should possess the entire required document on that date unless it is exempted under the tender conditions. Under the said para-7 of the eligibility criteria no such exemption has been given. I do not find any clause either in tender or any corrigendum, which gives any relaxation on the requirement of valid certificate of registration under Carriage by Road Rules, 2011. Neither any clauses stating requirement of uploading only application instead of valid certificate of registration.

(c) xxx

(d) xxx

(e) The petitioner has submitted copy of order dated 19.04.2016 passed by Calcutta High Court in the case of SN Bose & Co. v. IOCL and another (WP no. 3506/2015) in which it is recorded that IOC has waived the statutory provision and similar tender condition regarding of certificate of registration under Carriage by Road Act 2006, under tender no. WBOP/POL/BULK ATF/SILIGURI/PT-10/2014 for Road transportation of petroleum products (ATF) Ex- Siliguri Terminal.

It may be noted that in the above order itself it is mentioned that Concerned authorities were not issuing any certificate at the relevant time and as such the condition regarding certificate of registration was relaxed for all bidders and not to any specific bidder. However, in the present case the application has been made to the registering authority of Haryana State at Chandigarh by the petitioner and the same authority has issued certificates to various other transporters which have been submitted in the same tender. Hence question of relaxation on such ground does not arise in this tender."

7. In *M/s B.S.N. Joshi and Sons Ltd. v. Nair Coal Services Ltd. and others*, 2006 (11) SCC 548, *Jagdish Mandal v. State of Orissa and others*, 2007 (14) SCC 517, and *Maa Binda Express Carrier and another v. Northeast Frontier Railway and others*, 2014 (3) SCC 760, it has been repeatedly held by the Apex Court that cancellation of tender process does not violate any fundamental right of the applicants. While examining the scope of judicial review in the matters of award of contracts, it was held by the Apex Court in *B.S.N. Joshi's* case (*supra*) that the employer is the best judge to award contract and the court's interference in such matter should be minimal. The Court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent. It was held as under :-

"It may be true that a contract need not be given to the lowest tenderer but it is

equally true that the employer is the best judge therefor, the same ordinarily being within its domain, court's interference in such matter should be minimal. The High Court's jurisdiction in such matters being limited in a case of this nature, the Court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the employer is apparent on the face of the record."

The Apex Court in *Maa Binda Express Carrier's case* (supra) with regard to the scope of judicial review in contractual matters, inter alia, noticed that the State authorities are required to be conceded greater latitude and their action is not open to judicial review unless it can be demonstrated to be malicious, arbitrary, unreasonable or misuse of its statutory powers. The relevant observations recorded therein are extracted as under:-

"10. The scope of judicial review in contractual matters was further examined by this Court in *Tata Cellular v. Union of India* (1994) 6 SCC 651, *Raunaq International Ltd.'s case* (supra) and in *Jagdish Mandal v. State of Orissa and Ors.* (2007) 14 S C C 517 besides several other decisions to which we need not refer.

11. In *Michigan Rubber (India) Ltd. v. State of Karnataka and Ors.* (2012) 8 SCC 216 the legal position on the subject was summed up after a comprehensive review and principles of law applicable to the process for judicial review identified in the following words: (SCC p. 229 paras 19-20)

"19. From the above decisions, the following principles emerge:

(a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

20. Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"; and

(ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article 226."

12. As pointed out in the earlier part of this order the decision to cancel the tender process was in no way discriminatory or mala fide. On the contrary, if a contract had been awarded despite the deficiencies in the tender process serious questions touching the legality and propriety affecting the validity of the tender process would have arisen. In as much as the competent authority decided to cancel the tender process, it did not violate any fundamental right of the appellant nor could the action of the respondent be termed unreasonable so as to warrant any interference from this Court. The Division Bench of the High Court was, in that view, perfectly justified in setting aside the order passed by the Single Judge and dismissing the writ petition."

8. The facts and circumstances of WP No. 3506 (W) of 2015, in SN Bose's case (supra), relied upon by the petitioner, are distinguishable from the facts of the present case, because in that case, at the relevant time, the concerned authorities were not issuing any certificate. As such, the condition regarding submission of certificate of registration was relaxed for all bidders and not for a specific bidder, whereas in the instant case, undisputedly, the Registration Authority of the Haryana State at Chandigarh was very much issuing such certificates and same was also obtained by the petitioner firm, but on a later date, and submitted the same with the respondents after submitting its e-tender. As such, case of the petitioner cannot be treated at par with SN Bose's case (supra). Moreover, questions of facts are involved in this case, which require evidence. It is needless to mention here that this court is not to act as a court of appeal and under the extra ordinary writ jurisdiction, such questions of facts cannot be decided by this court. Thus, action of the respondents in rejecting the tender of the petitioner firm for the reasons "not meeting PQC" cannot be said to be illegal or arbitrary. We do not find any illegality or perversity in the impugned e-mail/order dated 23.08.2016 (Annexure P-10) and the well reasoned order dated 12.10.2016 (Annexure P-14) rejecting the representation of the petitioner against the said e-mail/order.

9. Petition is, accordingly, dismissed.