

(2016) 09 GAU CK 0035
In the Gauhati High Court
Case No : Writ Petition (C) No. 2521 of 2016

M/s Ratneswar Baruah

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 GauLJ 402 : (2016) 5 GauLT 205

Hon'ble Judges : Mr. Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : Mr. S. Chamaria, Advocate, for the Petitioner; Mr. D.C. Borah, Central Government Counsel, for the Respondent No. 1; Mr. P.J. Saikia and Mr. A.K. Gupta, Advocates, for the Respondent Nos. 2 to 4; None appeared, for the Respondent No. 5

Final Decision : Disposed Off

Judgement

Mr. Arup Kumar Goswami, J. - In the instant writ petition, while issuing notice of motion on 27.04.2016, an interim order was passed. Subsequently, respondent No.2 filed an application for vacation/alteration/modification of the aforesaid interim order, which was registered as I.A. (Civil) No.188/2016. An objection to the said application was also filed by the writ petitioners.

2. On 04.08.2016, when the I.A. and the writ petition were listed, learned counsel for the parties had submitted that instead of taking up the interlocutory application, the writ petition may be taken up for disposal.

3. In the writ petition, respondent No.2 had filed affidavit but no reply affidavit was filed by the writ petitioners till then. Mr. Chamaria had submitted that the objection filed by the writ petitioners to the interlocutory application may be taken into consideration while disposing of the writ petition. To that Mr. Saikia had no objection.

4. The matter was taken up for consideration on that day itself for disposal. After

considerable hearing had taken place, Mr. Chamaria had prayed for taking up the case on 16.08.2016 to enable him to file an affidavit on a limited aspect of the case, to which Mr. Saikia did not object. Accordingly, an additional affidavit was filed by the writ petitioners and an affidavit-in-opposition was filed by the respondent Nos.2 to 4 on 10.08.2016 to the aforesaid additional affidavit.

5. Respondent No.5, i.e. M/s E-Procurement Technologies Ltd. (ETL), is not represented. Respondent No.5 was engaged by respondent No.2 as authorised service provider for conducting on-line electronic bidding process in respect of the Notice Inviting Tender (NIT) in question based on which the writ petitioners had submitted their respective tenders. The learned counsel for the appearing for the parties submitted that respondent No.5 is only a formal party.

6. Respondent No.2, i.e. Bharat Petroleum Corporation Limited (BPCL), issued an NIT through respondent No.4 on 13.03.2015 inviting tenders from tank-lorries owners for award of contract for road transportation of bulk petroleum products like MS/HSD/SKO/branded fuels/ATF, Ex-NRL DU at Numaligarh. Tank-lorries were required in three different capacities : less than 12KL, 12KL and 18KL and above. Estimated requirement of tank-lorries are 30, 15 and 85 in respect of less than 12KL, 12KL and 18KL and above, respectively. Clause-15 of the General Instructions to Tenderers for Etendering stipulated that tenderer should offer minimum 5 Nos. of tank-lorries for each location out of which minimum of 40%, i.e. minimum of 2 Nos. of tank-lorries should be owned by the tenderer. Subsequently a Corrigendum was issued in respect of Clause-15 providing that the tenderer should offer minimum 3 Nos. of tank-lorries for each location out of which minimum of 66.66%, i.e. minimum of 2 Nos. of tank-lorries should be owned by the tenderer. The last date and time of submission of tender documents was fixed on 06.04.2015 at 14.00 Hrs. The NIT consisted of two-bid system : technical bid and price bid. Price bid required offer for rates for each capacity of tank-lorries in six sectors: (i) delivery within the Free Delivery Zone (FDZ), (ii) delivery Beyond Free Delivery Zone (BFDZ) within the State, (iii) delivery BFDZ outside the State, (iv) delivery BFDZ within State Hilly Areas, (v) delivery BFDZ outside State Hilly Areas involving one State and (vi) delivery BFDZ outside State Hilly Areas involving two States and the tenderers are required to quote rates for all the above sectors separately, for each capacity of the tanklorries offered by them. The tenderers who qualified in the technical bid alone are entitled to submit price bid. Tenderers are required to quote rate in between up to +/- 5% of the BPCL offered estimated transportation rate and tenderers quoting beyond +/- 5% of any of the BPCL estimated transportation rate are to be treated as disqualified and their tenders are to be rejected.

7. Case of the petitioners is that they quoted minimum rate and offered three lorries each and accordingly, they had been selected as L-1 tenderers. Total of 119 bidders had participated and initially 12 bidders were selected as L-1 bidders. Subsequently, negotiation of rate, as prescribed by the NIT, had been undertaken and eventually 33 tenderers had turned out to be L-1 tenderers. The

tenderers who were not L-1 tenderers also demanded work order in their favour though they were not entitled to and they had held out a threat that unless work orders were also given to them, they would stall the process of transportation of NRL products. The situation deteriorated and this prompted the Deputy Commissioner and Superintendent of Police of Golaghat District to intervene and accordingly, a meeting was held on 09.10.2015 with tenderers not falling into L-1 group and in that meeting, it was decided that one tank-lorry for each tenderer would be accepted irrespective of their position. Based on the aforesaid decision taken, on 09.10.2015, an e-mail was sent to all L-1 tenderers to submit a no Objection Certificate (NOC) in a particular format conveying that they do not have any objection in allowing all the qualified tenderers to get allotment at L-1 rate. The petitioners declined to submit such NOC. Averments are made in the writ petition that the petitioner No.1 had booked three tank-lorries by taking financial assistance and investing a huge amount and the petitioner No.2 had offered three tank-lorries by withdrawing the same from Indian Oil Corporation Limited (IOCL). Though work orders were required to be issued within a period of three months from the date of closing of the tender on 06.04.2015, authorities are delaying the matter and pressurising the petitioners to submit NOC and ultimately they had to approach this Court when telephonic call was made to them asking the petitioners to submit NOC immediately failing which they were informed that award of contract would be issued in respect of other tenderers. Accordingly, the petitioners impugn the decision taken on 09.10.2015 with a prayer for a writ of mandamus directing the respondents to issue award of contract to the petitioners by accepting three tanklorries each being L-1 tenderers.

8. The respondent Nos.2, 3 and 4, in their affidavit, had stated that the closing date, which was earlier fixed on 06.04.2015, was extended to 21.04.2015. Petitioner No.1 did not offer any tank-lorry but only offered chassis numbers of three lorries and petitioner No.2 had offered one tank-lorry of 12KL and two of 20KL. Altogether 24 bidders including the writ petitioners had quoted lowest rate of the price band for all sectors. In all 117 tenderers had qualified for submission of price bid and 116 had qualified for 130 Nos. of tank-lorries as mentioned in the NIT. After the electronic price bid was opened, it emerged that No. of ready built tank-lorry offered at L-1 rate in respect of less than 12KL, 12KL and 18KL and above were 0, 45 and 73, respectively. No. of chassis offered at L-1 rate were 0, 2 and 7 in respect of less than 12KL, 12KL and 18KL and above, respectively.

Thus, there was short-fall of ready built tank-lorries at L-1 rate 30, 0 and 12 in respect of less than 12KL, 12KL and 18 KL and above, respectively. In view of the above, negotiation was decided to be held on 10.08.2015 and 11.08.2015. After first day of negotiation, seven tenderers with four ready built tank-lorries and 17 chassis of 18KL and above agreed to L-1 price and thus, the short-fall was reduced to 8 Nos. from earlier 12.

On the second day of the negotiation, majority of the tenderers under the aegis of Numaligarh Oil Refinery Tanker Association (NORTA) refused to reduce their rates and insisted that 50% of the lorries are to be allocated at their quoted rate and only the balance 50% are to be allocated to the L-1 tenderers. Some of the existing tenderers also went on strike on the day of negotiation. The demands raised by members of NORTA were not accepted and second round of negotiation was held on 30.09.2015. For less than 12KL, only one tenderer offered L-1 rate for two tank-lorries leaving a short-fall of 28 Nos. from earlier 30. Short-fall of 8 Nos. for 18KL and above remained. A stand was taken by members of NORTA not to reduce any rate and they went on an indefinite strike with effect from 01.10.2015, disrupting supply of petroleum products as a result of which the District Administration had to intervene and a meeting was convened with the tenderers and BPCL on 09.10.2015. The strike, however, was suspended with effect from 04.10.2015. Third round of negotiation was held on 09.10.2015 at the office of the Deputy Commissioner, Golaghat, in which representatives of NORTA agreed to match the L-1 rates and requested for equal distribution of tank-lorries at L-1 rate during the process of allotment. It was also agreed that less priority is to be given to those tenderers who had offered only chassis. Accordingly, majority of the tenderers had given their acceptance letters for L-1 rate and NOC. Members of NORTA having agreed to match L-1 rate, total number of own/attached chassis exceeded the requirement in 12KL and 18KL and above. In the final round of negotiation, 21 Nos. of L-1 tenderer out of 113 eligible tenderers at L-1 rate had offered chassis. 8 Nos. of chassis in respect of 12KL and 82 Nos. in 18KL and above were received. Total ready/own tank-lorries in the above two categories came to 107 and 231 Nos., respectively, and, therefore, in terms of the decision that the tenderers who offered chassis would come last in priority, the petitioner No.1 cannot claim any allotment for any tanker. The petitioner No.2 also cannot claim any work order as the tank-lorries offered by him was in violation of the undertaking given by him that he had not withdrawn the tank-lorries from any Oil Company. Proof of booking by petitioner No.1 is also not in accordance with Attachment No.10 of the NIT. It is also pleaded that L-1 tenderers for the purpose of allotment had been finalised in respect of below 12KL category and L-1 tenderers had been short-listed for the other two categories.

9. In the affidavit-in-opposition filed in the interlocutory application, it is stated by the writ petitioners that the district administration is not the tendering authority to take any decision in respect of the NIT in question and the respondents succumbed to illegal demands made by members of NORTA. Relying upon Clause-15(iv) of the General Instructions to Tenderers for E-Tendering, it is pleaded that it is permissible to participate in the NIT by submitting booking vouchers of vehicles along with declaration in the form of affidavit in case the tenderer is offering tank-lorry of 18KL and above and, therefore, plea taken that tender of the petitioner No.1 is invalid is not tenable in law. The decision taken in the meeting held on 09.10.2015 to the effect that ready built tank-lorry would be

given first preference is not in conformity with the NIT.

10. In the additional affidavit, the petitioner No.2 had stated that at the time of participation in the NIT, one 12KL tank-lorry and one 20KL tank-lorry were running under IOCL, whereas one 20KL tank-lorry was running under BPCL. Accordingly, Attachment No.8 was filled up. The two tank-lorries under IOCL were sought to be withdrawn from IOCL proposing to substitute the said two vehicles by new vehicles as the vehicles required high maintenance cost in view of the fact that they were running in Hill Areas and the IOCL had, by issuing 2(two) orders, dated 14.12.2015 and 14.03.2016, allowed withdrawal of the said two vehicles to be replaced by 2(two) 20KL vehicles and on that day itself, the petitioner No.2 placed 2(two) 20KL vehicles with IOCL.

11. In the reply to the aforesaid additional affidavit, it is stated by the respondent Nos.2, 3 and 4 that orders dated 14.12.2015 and 14.03.2016 would go to show that the vehicles had to be replaced due to mechanical problem and that one tank-lorry bearing registration No.NL-04/D-1129 of 20KL capacity offered by petitioner No.2 is owned by one Ms. Baby Sur, which was operating under M/s MLC Enterprise and she had mentioned in Attachment No.9 falsely stating that the same is not operating in any other location of BPCL.

12. Mr. Chamaria has submitted that the petitioners had qualified in the technical bid and, therefore only, they could submit price bid and the respondent Nos.2, 3 and 4 had taken untenable stand that booking of chassis by the petitioner No.1 was not in accordance with law and that petitioner No.2 had violated the undertaking given that he had not withdrawn any tank-lorries from any Oil Company. It is submitted that such pleas are raised by the BPCL only in an attempt to disqualify the petitioners so that they can make allotment of tank-lorries to the members of NORTA who made illegal demands, pursuant to the decision taken on 09.10.2015. He has submitted that the decision taken in the meeting dated 09.10.2015 is antagonistic to the conditions of the NIT and if such decision is allowed to stand, the same would result in obliteration of the conditions of the NIT. As per the conditions of the NIT, tenderers are required to offer three tank-lorries each and there is no provision for acceptance of one tank-lorry each from all the tenderers irrespective of their rank in the tendering process. Accordingly, he submits that the decision arrived at in the meeting dated 09.10.2015 cannot receive judicial imprimatur.

13. Mr. P.J. Saikia, learned counsel appearing for the respondent Nos.2, 3 and 4 submits that the decision to accept one tank-lorry each from all tenders had to be adopted in the peculiar facts and circumstance of the case in public interest for smooth supply of essential commodity. He has submitted that the Clauses of the NIT also empower the BPCL to take a decision to divide the work among the contractors. Clauses of the NIT would go to show that BPCL prefers own/attached ready built tank-lorries and option for providing only chassis had been incorporated in the NIT only in respect of 18KL and above tank-lorries considering the price factor. It was not known at the time of consideration of the

technical bid that the petitioner No.2 had withdrawn tank-lorries from IOCL and only on perusal of the averments made in Paragraph-9 of the writ petition, the aforesaid fact came to light and the same is in gross violation of the undertaking given by him. The petitioner No.2 is the owner of two vehicles bearing registration Nos.AS-23/E-6975 (12KL) and NL-04/A-9797 (20KL) which were in contract with the IOCL and, therefore, the undertaking given by petitioner No.2 that the tank-lorries had not been withdrawn from any other contract with any other Oil Company is palpably false. He further submitted that the petitioner No.1 having offered only chassis, in terms of the decision dated 09.10.2015, would come last in priority and, therefore, would not be entitled to any tank-lorry in his favour. The learned counsel has relied on the following judgments in the case of *Tata Cellular v. Union of India*, reported in (1994) 6 SCC 651; *Raunaq International Limited v. I.V.R. Construction Limited & Ors.*, reported in (1999) 1 SCC 492; *Jagdish Mandal v. State of Orissa & Ors.*, reported in (2007) 14 SCC 517 and *Rishi Kiran Logistics Private Limited v. Board of Trustees of Kandla Port Trust & Ors.*, reported in (2015) 13 SCC 233.

14. Mr. D.C. Bora, learned Central Government Counsel submits that as the dispute is between the petitioners and BPCL, the Union of India is a formal party and, therefore, he has not addressed any arguments on the issues confronting the Court.

15. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

16. At the outset, Clauses-6, 19 and 25 of the General Instructions to Tenderers for E-tendering being relevant, the same are quoted herein below:

"6. Price bidding of only those Tenderers shall be permitted whose Technical (Pre-Qualification) is found to be acceptable to us. The Schedule for conducting electronic price bid shall be advised separately.

19. BPCL reserves the right, at their sole discretion, and without assigning any reason whatsoever, to:

- a) Negotiate with any or all tenderers,
- b) Divide the work among contractor(s),
- c) Reject any or all tenders either in full or in part,
- d) Assign the offered and accepted tank-lorries to any of the contracts, and
- e) Engage additional contractors/tank-lorries at any time without giving any notice whatsoever to the contractors already appointed against this Tender.

25. Bharat Petroleum Corporation Ltd. reserves the right to accept or reject any or all the tenders in part or in totality, or to negotiate with any or all the tenderers, or to withdraw/cancel/modify this tender without assigning any reason whatsoever, or to accept some or all the tank-lorries offered."

17. It will also be appropriate to extract Clauses-6, 8, 10 and 12 of Evaluation of the Tenderers:

"6. In case, rates offered by L-1 tenderers are acceptable to BPCL, number of tank-lorries quoted by the L-1 tenderers will be allocated up to the requirement.

8. In case of the T/Ls offered by Rs. 1 tenderers is not meeting full requirement, then the Rs. 1 rates/revised rate accepted by Rs. 1 tenderers would be offered to all the remaining tenderers and based on their ranking and acceptance, T/Ls would be inducted at above rates till the requirement of all T/Ls is met.

10. In case, for a particular ranking, tank-lorries offered are more than the requirement then tank-lorries will be taken based on the following order of priority:

(a) OWN higher capacity Tank Lorry offered.

(b) Tenderer offering highest number of Own TL's of the specific capacity of TL's.

(c) Number of Tank Lorry offered with lower age.

Transporters in a particular ranking will be further ranked based on the above order of priority and allocations will be made only till such time that the full requirement of tank lorry is met. Consequently, transporters who rank lower may not get the allocation.

12. In view of the Critical nature of the Transportation Services, the Corporation wishes to negotiate and award jobs to other than Rs. 1 even if the requirement is fully met by Rs. 1. Hence the Corporation may decide at its sole discretion to distribute the quantities amongst the technically and commercially acceptable vendors. In such situations the following discretion pattern will be adhered to:

The Job will be distributed among 3 vendors, and the percentage allocation among them would be Rs. 1 - 70%, Rs. 2 - 20% and Rs. 3 - 10%.

In case of only two vendors, percentage allocation among them would be Rs. 1-80% and Rs. 2 - 20% respectively."

18. Before proceeding to consider the issues involved, as appearing from the submissions of the learned counsel appearing for the parties, it will be also apposite to take note of the judgments of the Apex Court, which had been cited at the bar.

19. In *Tata Cellular (supra)*, the Apex Court had laid down the following principles:-

"(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision.

If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere.

However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

20. In *Raunaq International Limited* (supra), relaxation of the terms of the tender was granted in favour of *Raunaq International Limited* on valid principles looking at the expertise of the tenderer and his past experience although it did not tally with the prescribed criteria. The respondent who had challenged also did not make the requisite criteria. In the aforesaid context, the Apex Court had observed that award of tender cannot be stayed at the instance of a party which does not fulfil the requisite criteria itself and whose offer is higher than the offer which has been accepted.

21. In *Jagdish Mandal* (supra), the Apex Court had pointed out that a Court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the questions as to whether the process adopted is mala fide or intended to favour someone or whether the process adopted or decision made is so arbitrary and irrational that no responsible authority acting reasonably and in accordance with relevant law could have reached. If the answers are on the negative, there should be no interference under Article 226 of the Constitution of India. The Apex Court also pointed out that cases involving blacklisting or imposition of penal consequences of a tenderer/contractor or distribution of State larges stand on a different footing as they may require a higher degree of fairness in action.

22. In *Rishi Kiran Logistics Private Limited* (supra), the principles enunciated in *Tata Cellular* on the scope of judicial review was reiterated.

23. It is an admitted position that the petitioner No.1 had submitted chassis for three vehicles of 20KL. Clause-15(vi) of General Instructions to Tenderers for E-Tendering provides that tenderers desirous of offering higher capacity of 18KL and above tank-lorry and not owning as on the date of the advertisement will be allowed to offer the tank-lorry by submitting an affidavit as per Annexure-10

thereto. Only condition attached is that the tenderer should have physical possession of the vehicles within 30 (thirty) days from the date of issue of the Letter of Intent, failing which it is stipulated that earnest money deposited in respect of the tank-lorries offered shall be forfeited. I am unable to accept the submission of Mr. Saikia that documents submitted by the petitioner No.1 in respect of the vehicles offered by him were not in order. Having regard to the terms of the NIT, it is logical to conclude that as the petitioner No.1 had qualified in the technical bid, his electronic price bid was opened and, therefore, submissions advanced to the contrary cannot be accepted. In view of the provisions of the NIT, when a tenderer offers chassis booked in his own name, it has to be construed that he is offering his own vehicle. There is no provision in the NIT providing that tenderers offering chassis will form an entirely separate category. The priorities indicated in Clause-10 of Evaluation of the Tenderers also do not provide that tenderers offering chassis would come last in priority.

24. The undertaking to be given by the tenderers is provided in Attachment No.8. The Proprietor of the petitioner No.2 had given an undertaking that tank-lorries offered had not been withdrawn from any other contract with any other Oil Company or any other location of the BPCL. The reason for the requirement to give the undertaking lies in the fact that there should not be any unhealthy competition amongst the Oil Marketing Companies run and controlled by the Government of India and, therefore, if the offered vehicles are engaged with any other Oil Marketing Company, the same are not accepted by BPCL. It is also provided in the undertaking that if any information was found to be incorrect, the contract, if awarded, was liable to be cancelled, apart from the liability to pay damages, etc. Attachment No.9 is an affidavit to be submitted for attached tanklorries offered. The vehicle No.NL-04/D-1129 was not owned by the petitioner No.2 but was owned by one Smti. Baby Sur, who happens to be the wife of the proprietor of the petitioner No.2. In the said affidavit, statement is made that the aforesaid vehicle shall be kept attached during the validity of the contract with the petitioner No.2 and that the said tank-lorry is not operating under any other contract with any other Company or any other location of BPCL. It appears that the said vehicle was operating on attachment under M/s MLC Enterprise with BPCL location itself and, therefore, the affidavit did not disclose the correct state of affairs. The aforesaid vehicle being under attachment with some other party and being in operation under BPCL itself, could not have been offered under the instant NIT. Same is the position with regard to the other vehicles offered by the petitioner No.2 as the vehicles, on the date of the submission of the undertaking, were in contract with IOCL. Technically, it is true that on the said date, vehicles were not withdrawn. However, the fact remains that they were deployed under IOCL and the tenderer could not have placed the vehicles even if the contract was awarded without withdrawing the same from IOCL. From the orders dated 14.12.2015 and 14.03.2016, it appears that the two vehicles offered by the petitioner No.2 were allowed to be withdrawn and replaced due to mechanical problem. Mr. Saikia is right in submitting that at the

time of processing of the technical bid, the aforesaid facts were not to the knowledge of the BPCL and only after the petitioner No.2 had disclosed that the three tank-lorries were offered by withdrawing from IOCL the aforesaid factual matrix came to light. In Paragraph-9 of the writ petition, the writ petitioner No.2 had portrayed a picture as if he owned all the three vehicles and that all of them were under contract in IOCL. In fact, one of the vehicles belongs to his wife and was operating in BPCL under attachment with M/s MLC Enterprise.

25. In that view of the matter, I am of the consideration opinion that due to wrong furnishing of information, tender of the petitioner No.2 was accepted to be a valid technical bid. Clause-8 under the heading "Miscellaneous" of the NIT provides that if any of the information submitted by the tenderer is found to be incorrect at any time including the contract period, BPCL has the right to reject the tender/terminate the transportation contract and may pursue all such remedies that may be available in law. However, it appears from the averments made in Paragraph-8 of the affidavit-in-opposition filed by the respondent Nos.2, 3, and 4 on 19.05.2016 that notwithstanding the aforesaid, considering the peculiar facts and circumstances of the case, the petitioner No.2 had been shortlisted for acceptance of one tank-lorry.

26. It is to be noted that there is no challenge to the terms and conditions of the NIT. It appears that Clause-12 of the Evaluation of the Tenderers permits BPCL to negotiate and award contracts to tenderers other than L-1 Contractors even if requirement is fully met by L-1 tenderers and that the BPCL may decide at its sole discretion to distribute the quantities amongst the technically and commercially acceptable vendors and in such event, the percentage of allocation would be L-1 - 70%, L-2 - 20% and L-3 - 10%. Further, in the event of their being only two tenderers, percentage of allocation of the L-1 would be 80% and that of L-2 - 20%. This provision is incorporated in view of the critical nature of the transportation services. Clause-19 also permits dividing the work amongst the contractors, which in other words, means the eligible tenderers. The terms of the NIT has to be given meaningful interpretation. In case the BPCL does not exercise the rights reserved to it under Clauses-19 and 25 of General Instructions to Tenderers for E-Tendering, evaluation of the tenderers has to be made strictly in terms of Clauses-6, 8 and 10.

27. Though the petitioners had stated about illegal demands made by the members of NORTA and the strike resorted to them, NORTA is not made a party respondent in the instant writ petition and, therefore, this Court is of the considered opinion that the Court ought not to make any observation with regard to the legitimacy or otherwise of the demands made by the members of NORTA. However, it appears that there was disruption of transportation of petroleum products and because of the impasse, district administration had intervened. The district administration represented by Deputy Commissioner and the Superintendent of Police are also not made party respondents in the instant writ petition. It cannot be gainsaid that if any effort is made by the district

administration with the members of NORTA in order to resolve the differences, the same cannot be said to be wholly unwarranted. Having said so, the Court hastens to add that district administration could not have taken any decision on behalf of BPCL. The district administration, it appears to the Court, played a role of facilitator in resolving the issues that confronted the members of the NORTA and BPCL authorities. BPCL had also indicated that third round of negotiation had taken place in the office of the Deputy Commissioner, Golaghat and in such negotiation members of NORTA had matched L-1 rates. The decisions taken in the meeting dated 09.10.2015, apparently, are endorsed by BPCL.

28. When the terms of the NIT did not provide that the tenderers offering chassis would come last in priority, the decision taken in the meeting held on 09.10.2015 that those who had applied only with chassis will come last in priority cannot be approved. No decision could have been taken in such meeting subverting the terms of the NIT and causing prejudice to the tenderers who had offered chassis.

29. It is also to be noted that only the present 2(two) petitioners have assailed the decision of the meeting dated 09.10.2015, that too, not arraying members of NORTA and the Deputy Commissioner and the Superintendent of Police, Golaghat, who are necessary parties to this proceeding. As an outcome of the said meeting, certain rights have been created, rightly or wrongly, in favour of transporters, to have equal distribution of tank-lorries. Any interference with the same will militate against the principles of natural justice. Therefore, considering the facts and circumstances of the case, I am of the considered opinion that the reliefs prayed for in this writ petition ought to be moulded by directing BPCL authorities also to include the petitioner No.1 while the tank-lorries are allotted so as to ensure that the petitioner No.1 is given equal distribution. So far as the petitioner No.2 is concerned, it is already noticed that it has been decided to allot a tanklorry to him. He shall also be allotted a tank-lorry.

30. With the aforesaid observations and directions, the writ petition stands disposed of.