

(2001) 04 MAD CK 0022
In the Madras High Court

N. Loganathan and Others

APPELLANT

Vs

P. Elango and Others

RESPONDENT

Date of Decision : 02-04-2001

Acts Referred:

Citation : (2001) 3 MLJ 113 : (2001) WritLR 503

Hon'ble Judges : N.K. Jain, C.J

Bench : Division Bench

Judgement

N.K. Jain, C.J.—These writ appeals are against the order in W.P.Nos. 15644 to 15646 and 18044 of 2000 dated 3.1.2001 passed by the

learned Judge whereby the learned single Judge has allowed the writ petitions.

2. The necessary facts for the disposal of these cases are: Indian Oil Corporation, Hindustan Petroleum Corporation and the Bharat Petroleum

Corporation invited tenders for transport of bulk LPG for two years from various sources to various bottling plants in the four regions vide tenders

closing on 14th May, 1999 at 11.00 hours. A lot of tenderers along with the petitioners participated in the tender, which were accepted. The

grievance of the petitioners is that the contracts were awarded to respondents 10 to 14 in the writ petitions/ appellants in W.A.Nos. 229 to 232 of

2001, who were not eligible to get the same, as they did not fulfil any of the conditions of the tender and were not owners of any truck. All the four

petitioners filed separate writ petitions making all the oil companies and the respondents 10 to 14 as parties. Their main contention is that despite

the clear mentioning of the main condition for participating in tender that they should own the trucks, the respondents/ Corporations granted

tenders to respondents 1.0 to 14 without there being any truck and without

particulars of any truck in their application, and therefore the action is illegal, and prayed for a direction to the respondent/ Corporations, not to award any tender without the tenderers satisfying the tender conditions.

3. Respondents 1, 4 and 5 in W.P.Nos, 15644 to 15646 and 18044 of 2000 have filed a common counter affidavit denying all the allegations

contained in the affidavit, and submitting that it did not mean that any one who did not own truck could not participate in the tender rather they

could participate. It is mentioned that "particulars to TTs offered, if any", need not mean that the parties who did not offer any tank truck need be

rejected. It is submitted that the action of issuing Letters of Intent to S.C./S.T. tenderers was to strictly implement the reservation policy of

Government of India and the Corporations have not violated any conditions.

4. Respondents 2, 3, 6, 7, 8 and 9 in W.P. Nos. 15644 to 15646 and 18044 of 2000 have filed a counter affidavit denying the allegations made in

the writ petitions. The allegation that respondents 10 to 14 did not satisfy tender condition was denied. It is submitted that number of trucks would

vary depending on their requirement. Further, in view of the utilization clause, they could not guarantee minimum tank truck and no liability shall be

attached to the Corporations. It is submitted that it was logical in commercial prudence to accept the offer of lower rates as compared to those

who offer higher rates. It is submitted that the public exchequer will suffer irreparable loss and damage if the public sector oil companies were

debarred from utilizing the tank trucks as would be available at a lower rate from respondent Nos. 10 to 14. It is further submitted that any dispute

has to be referred to arbitration, as there is an arbitration clause in the agreement. Hence, it is prayed to dismiss the writ petitions.

5. The learned single Judge, on consideration of the arguments, allowed the writ petitions and directed the respondents 1 to 3 accept the tenders

only from those who were owners of the tanks-trucks, and the Corporations' dealers/ distributors, whose vehicle was available at the time of the

tender and to enter into the transport agreement immediately on the acceptance of their tender, vide order dated 3.1.2001.

6. Hence, the present writ appeals. The appellants in Writ Appeal Nos. 229 to 232 of 2000 are respondents 10 to 14 in the writ petitions and the

appellants in Writ Appeal Nos. 321 to 324 of 2001 are respondents 1 to 9 in the

writ petitions.

7. At the time of hearing the appeals, a common affidavit was filed on behalf of the respondents/ writ appellants in W.A. Nos. 321 to 324 of 2001.

It is stated that the tender was not for the purpose to hire any particular truck with a commitment of minimum number of days, mileage and number

of trips. If the oil companies are prohibited from utilizing the trucks from those who agreed to provide trucks within the dates mentioned, then they

were bound to use trucks offered at the cartel rate of Rs. 1.57 per MT per KM thereby incurring an additional expenditure of Rs. 1.5 crores. The

preference clause for tenderers having licensed/ registered operational trucks implies that not only the persons having tank trucks ready but also

those who did not have ready tank trucks as on the date of the submission of the tender were eligible to apply. Since the quantum of LPG required

to be transported is unknown and fluctuating, no correct estimate of requirement can be made and the mentioning of 6,750 tanks in the tender

document is of no significance and no firm commitment was given to take 6,750 tank trucks. Citing the various directions of the Union Ministry of

Petroleum and Natural Gas, it is submitted that on 15.2.1999, the Ministry intimated that the original plan of giving new connections to the new

customers of 40 lakh per year would be modified and it would be 50 lakhs instead of 40 lakh for that particular year. On 11.6.1999, it was

directed that 70 lakh customers would be enrolled for the year 1999-2000 as against the originally planned 40 lakhs modified to 50 lakhs. Again

on 10.1.2000, it was intimated that the second cylinder would be released to 60 lakh customers as against 30 lakh customers. On 8.1.2001, it was

further intimated by the Ministry that for the year 2001, 1.32 crores new customers would be enrolled. Thus, the requirement was totally unknown

at the time of floating the tender. It is also submitted that there was no question of deprivation of the workload to any tender whose rate had been

accepted and whose tank truck was in the queue, and the work was distributed in a systematic and transparent manner so that none of the

transporters was deprived or prejudiced. It is further submitted that no single person had been favoured, and acceptance of the rate quoted by

these who did not own trucks could not be said to be illegal. While the persons owning trucks had formed themselves into a cartel and quoted a

uniform rate of Rs. 1.57 per MT/KM to defeat the basic purpose of the tender, there was no uniformity amongst those who did not possess trucks

indicating that there was no cartel among them. By accepting the tenders from non-owners, not only the oil companies would benefit but it would

ameliorate the S.C./S.T. category, which is not at the cost of the writ petitioners/respondents.

8. Mrs. Radha Gopalan, learned Counsel, filed C.M.P.No. 3150 of 2001 for impleading Bulk Transport Owners' Welfare Association. It is

submitted in the affidavit filed in support of the petition that the members of the Association are all tank truck operators who carry bulk LPG from

the Refineries to the destinations and some of the members of the petitioner Association, who belong to SC/ST submitted tenders pursuant to the

tender notification dated 14.5.2000. After consideration and acceptance of the tenders from those who owned vehicles, the tenders of the

members of the petitioner Association were taken up and they were given letters of indent. Some other members of the petitioner Association after

the letters of indent acquired tank trucks at huge cost availing loan facility, and because of the order in the writ petition, the vehicles are remaining

idle causing serious hardship and irreparable loss to its members. It is submitted that the non-impleadment of its members was fatal to the

maintainability of the writ petitions and they came to know about the disposal of the writ petitions only after the judgment of the learned single

Judge was made known to them by the oil companies. Hence, they may be impleaded in the writ appeals.

9. Mr. V.T. Gopalan, learned Additional Solicitor General, appearing for the appellants in Writ Appeal Nos. 321 to 324 of 2001 submitted that

the learned single Judge proceeded on the wrong assumption that the tendering procedure was completed, without taking judicial notice of the

tendering process, acceptance of the offers, execution of the formal agreements and existence of the arbitration clause for any dispute. He alleged

that the writ petitioners framed a cartel to eliminate the respondents/transporters. He submitted that if the order of the learned single Judge were

allowed to stand, the Oil Corporations would be left with no option but to take trucks at a higher rate thereby incurring loss to public exchequer.

He submitted that the learned single Judge failed to see the entire documents while coming to the conclusion that only tank truck owners/dealers

and Distributors were qualified to submit their tender and to get an award of the contract pursuant to the tender. He submitted that the learned

Judge erred in not appreciating that the requirement of submission of particulars of the tank trucks was an additional clause and not an essential

eligibility criteria for submission of the tender. He prayed that the order of the learned single Judge is liable to be set aside.

10. Mr. G. Subramanian, learned senior counsel appearing for the appellants in Writ Appeal Nos. 229 to 232 of 2000 reiterated the contents of

the appellants in other appeals. He added that the writ petitioners were successful bidders and had been allotted the applied number of vehicles

and hence were in no way aggrieved so as to maintain the writ petitions. He further submitted that the Oil Corporations had categorically admitted

that the tender condition did not render the respondents 10 to 14 ineligible since owning of trucks on the date of submission of the tender or the

date of issuance of the letter of intent was not essentially a condition precedent for considering the offer. He submitted that the petitioners, who

belonged to general category, had no locus standi to file the writ petitions. The letters of intent were extended to SC/ST bidders only to implement

the policy of the Government to provide reservation. He contended that the learned single Judge failed to apply the decision rendered by this Court

in W.P.Nos. 8479 and 8862 of 1996. His further contention was that when the letters of intent had already been issued, the writ petitions, without

challenging the letters of intent, are liable to be dismissed.

11. Mr. Krishnamoorthy, learned senior counsel appeared for the first respondent in W.A.Nos. 229, 232, 323 and 324 of 2001. Mr. R.

Thiagarajan, learned senior counsel, appeared for the first respondent in W.A.No. 321 of 2001. Mr. M. Venkatachalapathy, learned senior

counsel, appeared for the first respondent in W.A.No. 322 of 2001. Mr. N.P. Kumar, learned Counsel appeared for the seventh respondent in

W.A.Nos. 321, 323 and 324 of 2001. Counters were filed by the respective parties.

12. The argument of the writ petitioners is that the bids consisted of two parts, credential bid and price bid. It is submitted that the tank-truck

requirement during the period of operation is approximately 6750 nos, which would however, depend on the requirement and capacity of tank-

trucks offered. Clause 4 of the tender document read that preference would be given to the tenderer having licensed/registered operational tank

trucks. Clause 5 read about reservation of 15% & 7 1/2% for S.C. and S.Ts. respectively and also mentioned that S.C. and S.Ts. should fulfil all

tender conditions and would not be eligible for any price preference or relaxation of standards. The main argument of the learned Counsel for the

writ petitioners is that some persons who have been granted Letters of Intent did not own trucks at the time of the Letters of Intent. The learned

single Judge had rejected the objection of the Oil Corporations and respondents 10 to 14 saying that the condition therein was that the tenderer

must have the possession or control over the vehicle whereas in the earlier case in W.P.Nos. 8479 and 8862 of 1996, the learned single Judge

(Justice J. Kanakaraj) had categorically held that the condition would not stand in the way of their getting the Letters of Intent as the said condition

was removed by corrigendum whereas in the present case, the restriction was there and therefore, the decision of Kanakaraj, J. in the earlier writ

petitions would not apply.

13. The counsel for the writ petitioners/ respondents finally submits that the learned single Judge has elaborately discussed the issue before coming

to the conclusion and the order of the learned single Judge needs no interference.

14. The learned single Judge in the present case, after going through the records and submissions of the counsel, came to the conclusion that it was

necessary that the tenderer owning or having possession or having control of the tank trucks was a pre-condition for considering the credential bid

of the tenderer and answered the same against the appellants.

15. We have heard the learned Counsel for the parties and perused the materials on record. C.M.P. No. 3150 of 2001 for impleading is allowed.

16. Before advertng to the case on hand, it will be appropriate to extract the relevant conditions in the tender document.

Clause 1 (ii): Estimated Tank-truck requirement on account of industry during the period of operation is approx. 6750 nos. However, this number

would depend on our requirement and capacity of Tank-Trucks offered:

Clause 4 (third paragraph): Reference will be given to the Tenderer(s) having licensed/ registered and operational tank trucks. In case the tank

truck is offered in more than one tender or to more than one Corporation, all the

related tenders will be rejected.

Clause 5(a) and (c): The provision of reservation will be 15% (fifteen per cent) and 7 1/2% for S.C. and S.T. respectively on All India Basis.

The SC/ST members should fulfil all tender conditions, and will not be eligible for any price preference or relaxation of standards.

Guideline 3.2: Credential bid in three pages including statement of particulars of TT/s offered, if any.

Guideline 4.1: DD drawn on a scheduled Bank payable at the location of the office receiving the tender or a photocopy of IOC/ HPC/BPC cash

receipt towards applicable earnest money is to be submitted. A photocopy of the cash receipt for payment for purchase of Tender document is

also to be enclosed.

Guideline 4.8: Authenticated copies of Registration Certificate/s, Certificate/s of Fitness, and Route permit/s for the T/T"s.

Guideline 4.11: Authenticated copies of CCE Licenses for each of the T/T"s offered if..

Guideline 5.2: Affidavit/s from the Owners of the attached (hired) T/T"s. (to be submitted at the time of acceptance of the contract).

17. A perusal of the tender terms reveals that sealed tenders were invited from LPG tank truck owners and Corporations" Dealers/ Distributors

....Clause 4 reads that preference would be given to the tenderers having licenses/ registered and operational tank trucks. There is nothing to reveal

that those who did not own tank trucks should not apply or were not eligible to apply though there is a condition that in case, if the same tank truck

was offered in more than one tender or to more than one Corporation, all related tenders will be rejected. There is also a provision for reservation

of 15% and 7 1/2% for S.C. & S.T. respectively but they should fulfil all tender conditions and would not be eligible for any price preference or

relaxation of standards as per the clause. Authenticated copies of R.Cs Certificates of fitness and Route Permits are necessary. So also affidavits

from the owners of the attached (hired) tank trucks should be furnished at the time of acceptance of the contract. A perusal of the records reveals

that a lot of persons had applied including those who had not owned ready vehicles. Those who had operational tank trucks were selected, as

preference would be given to those tenderers with operational trucks and ready

in all respects. The writ petitioners and some others are of that category. So, when the conditions are clear and no ambiguity in the tender conditions, this Court cannot substitute its own to the plain and simple meaning, in the absence of any prohibition or ineligibility clause to those tenderers who did not have ready tank trucks to apply and applied in time as per the tender notice.

18. It was argued by the learned Counsel for the appellants that the writ petitioners have no right to agitate the issue and they have not at all been deprived, more particularly when the requirement of L.P.G. is increasing day by day which is clear from the Government's directions issued from time to time. It is also submitted that the petitioners cannot object to the award of the contract to others more particularly when their tenders have been accepted. The writ petitioners cannot have any grievance and these writ petitions are liable to be dismissed.

19. The statement filed on behalf of the appellants in W.A.Nos. 321 to 324 of 2001 shows the number of tenderers, having total ready tank trucks, proposed tank trucks, tenders offered and awarded for all India as well as southern region and it also shows that a lot of persons including about 901 tenderers offering proposed tank trucks had applied for southern region in pursuance of the tender. In SC/ST category, 1251 tenders with proposed tank trucks were offered. Out of that 400 were awarded. It is stated that each truck is expected to cover a distance of approximately 4000 kms per month. On all India basis, besides having 9409 ready tank trucks and 2321 proposed tank trucks were accepted. It is also observed that taking into account the induction of the proposed 400 tank trucks offered by SC/ STs in the Southern Region, the average distance that might be covered would be approximately 3,400 kms. per truck per month. The percentage effect of induction in overall business is expected to be 6% only. Counsel for the I.O.C. also filed a statement showing the business of monthly average, RTKMS covered number of trips and the amount paid to the writ petitioners particularly Sri Saravanan & Company and Karthik Bulk Gamers, and submitted that the business of the writ petitioners is not at all affected and these facts are also not controverted by them by producing any material. Learned Additional Solicitor General submitted that some of the tenderers who have operational tank trucks,

have also applied for proposed tank trucks. He submitted that as sufficient number of tank trucks were required to cater to the ever increasing demand of LPG, the tenders of those who had applied in time agreeing to produce the vehicles on fulfilling other conditions, would be considered.

20. Be that as it may, as the facts culled out and as stated, there is no bar for those who did not own trucks to apply, and therefore keeping in view the terms and conditions and in the facts of the given case, the issuance of letters of intent to them cannot be said to be bad nor can it be interfered with, when the notification as such has not been challenged. Therefore, in our view, the direction of the learned single Judge to consider only those tenderers having possession of tank trucks is not sustainable.

21. It is pertinent to note that earlier also such a contention i.e., the tenderers should own trucks at the time of submission of the tenders, came to be considered by a learned single Judge (J. Kanakaraj) of this Court in W.P.Nos. 8479 and 8862 of 1996. The Oil Corporation in that case had changed the earlier clause by a corrigendum enabling the non-owners of the trucks also to participate in the tenders. The main contention of the petitioners therein was that the removal of that clause was bad. The learned single Judge, on consideration of the preamble of the tender and terms and conditions, found nothing irrational in permitting non-tank owners to participate in the tender process. The learned single Judge dismissed both the earlier petitions on 5.9.1996.

22. The argument of the learned Counsel for the appellant Corporations that the learned single Judge has wrongly distinguished the earlier decision has some substance and the ratio of the earlier decision, which upheld a corrigendum issued substituting the clause enabling the non-owners of trucks also to participate in the tender instead "that tenderers must own operational truck" with the clause that preference would be given to the tenderers with operational tank trucks, is fully applicable, as stated, in the absence of any prohibition clause. The learned single Judge has wrongly distinguished that case with the case on hand holding that the tenderer must have possession or control over the vehicles, as the tender notice only speaks about the preference to those who owned trucks. In our view, it does not mean that the tenders of those who did not have ready vehicle

would not be eligible for consideration. So, on consideration, we are of the view that the learned single Judge has wrongly distinguished the earlier decision.

23. Learned single Judge has also lost sight of the fact that the number of vehicles may vary from 6750, which has been clearly mentioned in the tender document itself. It is not possible to hold that just to help the respondents 10 to 14, they had increased the fleet. L.P.G. is a commodity in public distribution system and to meet the increasing demands from the domestic arena, the Oil Corporations are making arrangements to help them. Further, as per the additional affidavit filed on behalf of the Corporations, it is clear that Union Ministry of Petroleum and Natural Gas has increased the quantity several times and no exact figure could be fixed. In this fact situation, we are unable to agree with the learned Counsel for the writ petitioners/ respondents 10 to 14.

24. On considering the terms and various letters, it is clear that the Government has evolved a policy of bridging the gap between the rich and poor and in that direction did not insist for the ownership of tank-trucks at the time of applying. As such, the writ petitioners cannot be said to be aggrieved by any award of contracts to them and more so, they cannot be heard to object to the award of contracts. In this fact situation, we are unable to agree with the learned Counsel for the respondents 10 to 14 that the order of the learned single Judge is sustainable. The contention that by giving Letters of Intent to the tenderers who had offered proposed vehicles, they have to wait for some time, which is negligible, cannot be a ground to maintain the order of the learned single Judge. That apart, as per the document filed by the Corporation showing their earnings, trips etc. of respondents 10 to 14 which have not been controverted, it is clear that they have got full earnings during the period.

25. Considering the settled position, the only area where the Court can review a policy decision is to find out whether there is any legal or constitutional bar in adopting such a policy. This Court can review the decision of the Corporations when it is arbitrary or against the provisions.

As discussed, nothing has been shown that the power in the present case has been exercised mala fide or arbitrarily. In the case on hand, there is no failure to follow the guidelines. Therefore, the same cannot be gone into in

the present writ petitions.

26. In view of the above, the order of the learned single Judge is set aside. The writ appeals are allowed and the writ petitions are dismissed. No

costs. Consequently, C.M.P.Nos. 1430 to 1436 and 2244 to 2250 of 2001 are dismissed.