
(2022) 09 OHC CK 0083

In the Orissa High Court

Case No : Writ Petition (C) No. 39451 Of 2021

Nilendra Kumar Mahapatra Son Of Late Gadadhar Mahapatra
Ramchandrapur Bazar P.O./P.S. Jatni District Khordha

APPELLANT

Vs

Indian Oil Corporation & Others ?

RESPONDENT

Date of Decision : 13-09-2022

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Motor Vehicles Act, 1988 — Section 41, 64(b)
Central Motor Vehicles Rules, 1989 — Rule 48

Citation : (2022) 09 OHC CK 0083

Hon'ble Judges : Jaswant Singh, J;Murahari Sri Raman, J

Bench : Division Bench

Advocate : Devashis Panda, Prafulla Kumar Rath

Final Decision : Dismissed

Judgement

Murahari Sri Raman, J.—

1. This matter is taken up by virtual/physical mode.

2. The petitioner, an unsuccessful tenderer, has sought for the following reliefs:

"Under the circumstances the petitioner most humbly prays that this Hon'ble Court may be graciously pleased to issue notice of Rule Nisi calling upon the opposite parties to show cause as to why the rejection of petitioner's bid vide Annexure-1 should not be quashed as being illegal and arbitrary;

And upon the opposite parties not showing cause/or insufficient cause being shown, this Hon'ble Court be further pleased to quash Annexure-1 for being illegal and null and void and the opposite parties and more particularly opposite party No.2 be directed to consider the petitioner's tender on merits subject to the petitioner meeting the other terms and conditions of the notice inviting tender and award him the work of transportation of IOCLs bulk petroleum products ex-IOCLs Bhubaneswar terminal;

And pass such other and further orders as this Hon'ble Court may deem fit and proper."

3. The impugned Annexure-1 is the communication dated 19th November, 2021 of Indian Oil Corporation (in short, "IOCL") through e-mail indicating the following:

"Government electronic Procurement evaluation for the tender Indian Oil Corporation eProcurement portal/Date 19-Nov-2021

Sub: Financial evaluation for the tender-reg

Dear user,

With reference to your bid submission for the following tender

Tender Id : 2021_ERO_137817_1

Tender Reference No. : RCC/ERO/37/2021-22/PT-46

Organisation Chain : Indian Oil//Marketing//Easternn

Region Office//Contract cell

You are informed that your bid for the above tender has been rejected during financial evaluation by the duly constituted committee for the reason No Allocation of TT in the respective category as per Evaluation Criteria mentioned in the Tender Document.

In case of any clarifications or feed back, you may contact Tender Inviting Authority (TIA).

Tender Inviting Authority"

4. Shorn off details, the case of the petitioner runs as follows:

i. The petitioner, a continuing transporter of petroleum products of IOCL by tank trucks (referred to as "TT") ex-Bhubaneswar, participating in the tender process in the General Category, submitted his bid for 6 TT in the ratio of 2:4 [2 of 12-14KL capacity and 4 of 18-40KL capacity] in response to the Notice Inviting Tender (for brevity, "NIT") for Road Transportation of Bulk Petroleum Products—Motor Spirit/High Speed Diesel/Branded Fuels with location: Bhubaneswar Terminal.

ii. Prior to financial evaluation, his technical evaluation did find favour with, communication of which is to the following effect:

"Government electronic Procurement evaluation for the tender

Indian Oil Corporation eProcurement portal/Date 01-Nov-2021

Sub: Technical evaluation for the tender-reg Dear user,

With reference to your bid submission for the following tender

Tender Id : 2021_ERO-137817_1
Tender Reference No. : RCC/ERO/37/2021-22/PT-46
Organisation Chain : Indian Oil// Marketing//
Eastern Region Office//
Contract cell

You are informed that your bid for the above tender has been accepted during technical evaluation by the duly constituted committee.

In case of any clarifications or feed back, you may contact Tender Inviting Authority (TIA).

Tender Inviting Authority"

iii. As per Clause-22 of "Tender Terms & Conditions" appended to Notice Inviting Tender vide Annexure-2, "the Court of Jurisdiction till the placement of LoA is High Court of Kolkata and thereafter the High Court of Cuttack during the contract period". However, in the case of Ganesh Movers & Logistics Pvt. Ltd. Vrs. IOCL, WPA No.19365 of 2021, disposed of on 20.12.2021 challenge was laid before the High Court at Calcutta to the rejection of bid in respect of Jharsuguda Terminal on the fact of non-submission of Smart Card. The Single Bench of said Court held that "The endorsement at the bottom of the Registration Certificate that it is not valid in a motor vehicle without Smart Card" cannot invalidate the petitioner's tender, if otherwise the registration certificate is complete and valid. In the appeal preferred by the IOCL against this Judgment, being Indian Oil Corporation Limited Vrs. Ganesh Movers and Logistics Pvt. Ltd., MAT 71 of 2022, the Division Bench of said High Court at Calcutta confirmed the Judgment of the Single Bench. The matter was further carried in SLP(C) No.8223 of 2022 by IOCL before the Hon'ble Supreme Court which came to be dismissed on 6th May, 2022, thereby not interfering with the finding that submission of Smart Card along with registration certificate of TTs was not an essential condition of NIT.

iv. Analysis of Letter of Acceptance (for short, "LoA") would suggest that general category bidders have been issued LoAs in the ratio of 18:43 (61), SC category in the ratio of 10:18 (28) and ST in the ratio 9:7 (16); totaling to 115 TTs. It is specified in NIT that 25% of total quota is reserved for MSE-Gen, SC, ST & W taken together with 16% therefrom being reserved for SC/ST and 3% for MSE-W. The allocation position shows that general category were in the ratio 18:43 (61 TTs), in SC category it is 10:18 (28 TTs) and in ST category it is 9:6 (including 2 booking slips total is 15).

v. It is submitted by the petitioner that this Court in the cases of W.P.(C) No. 2430 of 2022, W.P.(C) No. 2920 of 2022 & W.P.(C) No.2160 of 2022 [SRB Transport, Sambalpur, Avtar Filling Station, Sambalpur, Maa Kalijae Transport, Sambalpur respectively], where cancellation of Letter of Acceptance issued to the petitioner(s) was under challenge, by a common Judgment dated 14.02.2022,

quashed the decision of cancellation by holding thus:

"In this case, when the order of cancellation of Letter of Acceptance has been passed without assigning any reason, this Court has jurisdiction to take account of the same with the touch stone of the reasonableness, which violates Article 14 of the Constitution of India."

vi. It is, therefore, prayed by the petitioner that since he is similarly placed as that of the petitioner(s) qua Jharsuguda Terminal, the communication dated 19.11.2021 issued by the IOCL deserves to be quashed and as a consequence thereof writ of mandamus is to be issued for allotment of TT to the petitioner.

5. Mr. Prafulla Kumar Rath, learned counsel for IOCL-opposite party Nos. 1 to 3, refuting the contentions of the petitioner submitted that:

i. Out of 6 TTs offered by the petitioner in the ratio 2:4, 5 TTs were rejected by Technical Consideration Committee ("TCC", as abbreviated) at the stage of Technical Evaluation. Copy of relevant extract of technical evaluation of TCC as enclosed to as Annexure-D/3 to the Affidavit dated 15th July, 2022 relating to the petitioner shows as follows:

"Regional Contract Cell, ERO

Ref.: RCC/ERO/37/2021-22/PT-46/02

Date 28.10.2021

2nd TCC meeting on 28.10.2022 for Technical Evaluation of the Bidders and Finalisation of Technically Qualified Bidders

Sub: Road Transportation of Bulk Petroleum Products by Top Loading Tank Trucks — MS/HSD/Branded Fuels Ex-Bhubaneswar Terminal

Evaluation of Ready TTs

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Nam e of the bidde r

S

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Registr ation No. of TT

offered

Car ryin g cap acit y in KL

Cate gory of TT

in KL

Regis tered Own er

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od el of TT

Dat e of man ufac urin g as per RC

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Age of TT

in days

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Pes o Lic ens e Val idit y

Rem arks

Acce ptanc e Statu s

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Nilen dra Kum ar Mah apatr

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12-

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KL

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BS

- III

1st January 201

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3502

P28 709

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202

4

Accepted

3

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Nilendra Kumar Mahapatra

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OD02 M3300

20

18-

40

KL

Nilendra Kumar Mahapatra

BS

- III

1st April 201

4

2681

P42 438

7

17-

06-

202

4

RC

particulars submitted which is not accepted and TT is rejected

Rejected

3

0

Nilendra Kumar Mahapatra

3

OD02 AV252 1

22

18-

40

KL

Nilendra Kumar Mahapatra

BS

- IV

1st Dec 201

9

611

P47 272

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15-

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RC

particulars submitted which is not accepted and TT is rejected

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Nilendra Kumar Mahapatra

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Nilendra Kumar Mahapatra

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1st Aug 201

9

733

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6

15-

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4

RC

particulars submitted which is not accepted and TT is rejected

Rejected

3

0

Nilendra Kumar Mahapatra

6

OD02 AV192 1

14

12-

16

KL

Nilendra Kumar Mahapatra

BS

- IV

1st Oct 201

9

672

P50 495

7

27-

04-

202

4

RC

particulars submitted which is not accepted and TT is rejected

Rejected

ii. At serial No.26 of the Technical Evaluation the position of the petitioner has been mentioned as follows:

26

Parties who qualify technically and eligible for participation in reverse auction to be

conducted through MSTC Portal

41 (Forty one) nos. of bidders are technically qualified as per Bidder

Evaluation Sheet attached as Annex-N:

Sr. No.

Bid Id

Name of

Bidder

Category

of bidder

27

784437

Nilendra Kumar

Mahapatra

General

The total accepted TTs vis-à-vis NIT requirement after Technical Evaluation is tabulated below:

Sl.

Category

NIT

TTs Accepted after Technical

No.

of TTs

require-

Evaluation

ment

Rea-

TTs

TTs

Total

dy

with

with

TTs

Purch-
Booki-
ase
ng
Invoice
slip
1
12-16KL
48
77
0
20
97
2
18-40KL
90
140
7
25
172
Total
138
217
7
45
269

iii. Since out of six TTs bid by the petitioner, five TTs were rejected at the Technical Evaluation stage, it is erroneous on the part of the petitioner to contend that the "bids" were rejected at the Financial Evaluation stage. Essentially, therefore, rejection of financial bid qua the petitioner was in respect of 1 (one) TT only.

iv. The bidders whose bids were rejected approached the High Court at Calcutta in WPA No.19365 of 2021 [Ganesh Movers & Logistics Pvt. Ltd.] and WPA No.19842 of 2021 [Ajay Pal Singh]. Vide Judgment dated 14.02.2022 the said cases were disposed of with the following observation against the IOCL by Single Bench of said Court:

"26. As held in paragraph 10 of the B. Yellaswamy decision (supra) [B. Yellaswamy Vrs. South Central Railway, rep. its General Manager, Secunderabad & Ors., 2007 SCC OnLine AP 29], the respondents should have clearly specified the requirement of RC book and/or Smart Card in addition to Registration Certificate in the NIT. ***

28. The principles of waiver, acquiescence and estoppel must also be applied against the respondents. The RC book and/or Smart Card, in the case of Ganesh and Smart Card is only in respect of M/s. Ajay Pal Singh were not found wanting during technical evaluation.

After communicating to them that they are technically qualified and allowing them to participate in the financial bidding process, the respondents are barred by the principle of waiver and acquiescence to deny technical eligibility. Estoppel also applies against the respondents. ***

30. Even assuming for the sake of argument that the requirement of a Smart Card or Registration Certificate could be read into Clause 1.3.3 of the NIT, the non-furnishing thereof cannot amount to violation of any essential condition of NIT in the facts of the case."

v. The said matter being carried in appeal before the Division Bench of said Court in MAT-71 of 2022 [Indian Oil Corporation Limited Vrs. Ganesh Movers and Logistics (P) Ltd.] and MAT-76 of 2022 [Indian Oil Corporation Limited Vrs. Ajay Pal Singh], vide Judgment dated 8th March, 2022 it has been held as follows:

"16. As held in the B. Yellaswamy Vrs. South Central Railway, rep. its General Manager, Secunderabad & Ors., 2007 SCC OnLine AP 29 at paragraph 10, the appellants should have clearly specified the requirements of RC book and/or Smart Card in addition to Registration Certificate in the NIT. The learned Single Judge correctly adopted the view of Hon'ble Supreme Court in Reliance Energy Limited and Another Vrs. Maharashtra State Road Development Corporation Limited & Ors., (2007) 8 SCC 1 and applied it to the facts of this case, wherein it stated that 'when tenders are invited, the terms and conditions must indicate with legal certainty, norms and benchmarks. This 'legal certainty' is an important aspect of the rule of law. If there is vagueness or subjectivity in the said norms it may result in unequal and discriminatory treatment. It may violate doctrine of level playing field'. The learned Single Judge was correct in holding that the observation of the Hon'ble Supreme Court in paragraph 13 and 14 of the Afcons Infrastructure Ltd. Vrs. Nagpur Metrorail Corporation Ltd. & Ors. reported in (2016) 16 SCC 818 are not applicable to this case.

17. After communicating to the respondents that they are technically qualified and allowing them to participate in the financial bidding process, the appellants are barred by the principle of estoppel, waiver and acquiescence to deny technical eligibility. The learned Single Judge further relied on *IRCTC Ltd. & Anr. Vs. Doshion Veolia Water Solutions Pvt. Ltd. & Ors.* (2010) 13 SCC 364 while observing that the non-furnishing of Smart Card cannot amount to violation of any essential condition of NIT in the facts of the case. The learned Single Judge also relied on *Vice Chairman & Managing Director, CIDCM Ltd. & Anr. Vs Shishir Reality Pvt Ltd. Ors.* (2021) SCC OnLine SC 1141 while holding that providing of the Smart Card is only a formality and the non-conformance of it cannot invalidate the entire bid. Moreover, the learned Single Judge correctly came to the finding that the observations of the Hon'ble Supreme Court in *The Shilpi Constructions Contractors vs Union of India & Anr.* reported in (2020) 16 SCC 489 are distinguishable from the facts of the present case."

vi. Being dissatisfied with said confirmed Judgment of High Court at Calcutta, the IOCL was before the Hon'ble Supreme Court of India in SLP(C) No.8223 of 2022 which came to be dismissed on 06.05.2022 with the following Order:

"We have heard learned ASG at some length. We may not completely agree with the view taken by the learned Single Judge and the Division Bench insofar as the mandatory requirement of meeting the obligations as set out under terms of the tender are concerned but the fact remains that the Technical Committee cleared these cases. It is not the case of one time mistake! Once the Technical Committee in its wisdom clears the cases then for the petitioner to contend the same would not facilitate the participation of the respondents could not be the correct proposition to accept. The mess is the own creation of the petitioners and it is they alone who are to deal with it.

We further clarify that our order should not be construed that the petitioners would not be empowered to inter alia verify the documents in terms of Clause 17 of the terms and conditions of the tender, at the later point of time.

In the end, we may only say that in the manner of submission of the learned ASG, which has merit, the Technical Committee then ought to have rejected the tenders at that stage.

The Special Leave Petitions are accordingly, dismissed.

Pending applications stand disposed of."

[Emphasis laid by the IOCL]

vii. Emphatically submitting, Mr. Prafulla Kumar Rath, learned counsel for the IOCL-opposite party Nos.1 to 3 has placed that the Hon'ble Supreme Court of India has not "completely agreed" with the Judgment of the High Court at Calcutta so far as requirement of furnishing "valid RTO registration" and stated that it has been clarified that IOCL can very well verify the documents in terms of Clause-17 of the NIT.

viii. Elaborating further, it is urged by learned counsel for IOCL-opposite party Nos.1 to 3 that the instant case is factually distinct from that is obtained in the cases of Ganesh Movers & Logistics (P) Ltd. and Ajay Pal Singh inasmuch as the bids respecting 5 TTs of the petitioner were rejected by the TCC at the stage of Technical Evaluation itself.

ix. Further, it is pertinent to place on record the case of Satyajit Panda Vrs. IOCL, FMA 318 of 2022, came to be disposed of vide Judgment dated 07.07.2022. Distinguishing Judgment dated 08.03.2022 rendered in Indian Oil Corporation Ltd. & Ors. Vrs. Ganesh Movers and Logistics (P) Ltd. & Anr (MAT 71 of 2022 with MAT 76 of 2022), the High Court at Calcutta held as follows:

"11. In the instant case however, the appellant/ writ petitioner had failed to submit copies of smart card at the preliminary scrutinising stage as prescribed in Section 41 of the Motor Vehicles Act 1988 read with Central Motor Vehicles Rules 1989 and thus failed to prove that the vehicle in question is registered in the name of the appellant. Thus, the appellants's/writ petitioner's bid was rejected in the preliminary technical stage. However, in Indian Oil Corporation Ltd. & Ors. v. Ganesh Movers and Logistics (P) Ltd. & Anr (MAT 71 of 2022 with MAT 76 of 2022), the bid was rejected not in the technical stage but in the subsequent financial stage and thus the appeal in MAT 71 of 2022 with MAT 76 of 2022 was allowed."

x. An affidavit dated 21.08.2022 has been sworn to by Sri Nrusingha Charan Sethy, General Manager In-charge (Operations), Odisha State Office whereby the position of the petitioner has been explained as follows:

"Assuming but not admitting that all 6 TTs offered by petitioner are to be considered qua the other Lot No.1 bidder as relied upon by petitioner on Supreme Court Judgment, then also the petitioner is not getting allocation of any TTs.

As per IOCL, the following was the requirement of TTs in respect of general category:

12-16 KL ... 17 Nos.

18-40 KL ... 41 Nos.

Total ... 58 Nos.

But internal evaluation of the TTs offered vis-à-vis average age of the freight of the TTs offered by the petitioner, it is found that the petitioner will figure below the allocated LOT-1 bidders, who have already been allocated with TTs. The comparative chart indicating position of the petitioner taking all his TTs as qualified will show that the petitioner is not qualifying in the rank list. The allocation in favour of bidders comes up to Sl.No.8 and the petitioner figures at Sl.No.10."

xi. The copy of the Chart as forming part of said affidavit dated 21.08.2022 is

placed herein below for better appreciation:

xii. Therefore, Mr. Prafulla Kumar Rath, learned counsel for the IOCL has urged that there is no warrant for intervention in the process of tender as the case of the petitioner has been duly considered and he was not found successful.

6. The scope of investigation into the justification of IOCL to reject the bid of the petitioner is limited. In the writ petition sole question is raised as to:

WHETHER REJECTION OF BID OF THE PETITIONER AT THE FINANCIAL EVALUATION STAGE IS CORRECT?

6.1. From the pleadings as contained in the writ petition it is manifest that the petitioner is aggrieved by the reason assigned by the IOCL to the effect that valid registration certificate particulars were lacking in term of Section 41 of the Motor Vehicles Act, 1988. Rule 48 of the Central Motor Vehicles Rules, 1989 framed in exercise of powers under Section 64(b) of the Motor Vehicles Act, 1988, envisages that with effect from 01.03.2019 a registration certificate is required to be issued in Form 23A, which in specific terms states that "this document is not valid unless accompanied with a valid Smart Card certificate of registration". Therefore, in absence of Smart Card the document enclosed to the tender application for participation cannot be said to be complete on the date of making the same. This Court having the opportunity to go through the copy of the Order dated 06.05.2022 of the Hon'ble Supreme Court of India wherein it has been clarified that said Hon'ble Court did not completely agree with the view expressed by the High Court at Calcutta and further stated that,

"our order should not be construed that the petitioners would not be empowered to inter alia verify the documents in terms of Clause 17 of the terms and conditions of the tender, at the later point of time."

It may also be relevant to say in this context that in respect of five (5) TTs out of subject six (6) TTs were rejected at the stage of technical evaluation. Thus, the remaining one (1) TT of the petitioner fell within scope for consideration in LOT-2, in view of Clause 1.4 of the NIT that TTs falling in desired ratio would be considered in LOT-1 with newest age and other TTs offered beyond ratio were to be considered in LOT-2.

6.2. With respect to the one (1) TT, which was rejected at the stage of financial evaluation, it is incorrect to say that the reason for rejection was on the ground of non-supply of Smart Card; rather the same was ignored, but the reason for declaration of the petitioner as unsuccessful was on account of merit consideration. It cannot be disputed that the actual requirement of number of TTs is 58. By way of allocation on the basis of ranking method specified in the NIT, the position of the petitioner is at serial No.10 in LOT-1, but all the requirement of TTs got exhausted at ranking serial No.8 in LOT-1 itself. Therefore, none from LOT-2 was required to be considered. The situation to that effect is demonstrated infra.

6.3. Relevant portion of "IMPORTANT NOTES", provided at Clause 1.4 of the NIT is extracted hereunder so far as is relevant for the present purpose:

"1. The general tenderer shall have to offer minimum 3 (three) tank trucks. All the TTs offered by the tenderers should be owned tank trucks only. Tenderers may offer ready TTs with valid RTO registration and CCOE License or may offer TTs based on purchase invoice of chassis. Separate purchase invoice shall be required to be submitted for each of the TT offered.

2. In case of SC/ST & MSE SC/ST, tenderers shall be required to offer minimum 2 (two) TTs. All the TTs offered by the tenderers should be owned tank trucks only. In addition to participation with ready TTs, in this category, tenderers will also be allowed to participate with a purchase invoice of chassis or booking slip for the chassis. Separate purchase invoice/booking slip shall be required to be submitted for each of the TT offered.

6. The maximum number of TTs that can be offered by a tenderer is 10% of the total number of TTs required in the tender, i.e., the maximum number of TTs that can be offered by the bidder in this tender is 14 (10% of 138). In case, number of TTs offered is more than 10%, only 10% TTs (TTs with newest age) will be taken for evaluation.

7. TTs to be offered in ratio and LOT system:

The tenderers will have to offer TTs in the ratio of number of TTs required capacity wise, i.e. 12-16KL : 18-40KL as indicated above.

Example (Actual figures to be given as per requirement):

The requirement for location as per tender is 48 numbers of 12-16KL and 90 numbers of 18-40KL, total 138 numbers.

Then a tenderer can maximum offer 14 TTs (10% of location requirement). Further in matching ratio one tenderer can offer maximum 4 numbers of 12-16 KL and 8 numbers of 18-40 KL capacity TTs. Like this minimum TTs which can be offered by a tenderer in the same ratio shall be 3 numbers, i.e., 01 number of 12-16 KL and 2 number of 18-40 KL capacity TTs. A tabular form in the ratio from 12 numbers of TTs to 3 numbers is as below:

Sr. No.

Total TTs offered

12-16 KL Cap

18-40 KL Cap

1.

12

4

8

2.

9

3

6

3.

6

2

4

4.

3

1

2

All the TTs which are falling in the ratio specified shall be considered as LOT-1.

Tenderer is free to offer TTs other than the above combination, i.e., not exactly in desired ratio, however limited to maximum number of 14 TTs (10% of location requirement).

In case a tenderer has offered TTs not in the desired ratio, then TTs falling in desired ratio shall be considered in LOT-1 (TTs with newest age). Other TTs offered beyond ratio shall be considered in LOT-2.

All the offers of TTs with only chassis and not built TTs shall be placed in LOT-3.

While allocation of TTs within L-1 rate finalized, the offers from LOT-1 will be allocated and if the location's requirement is still not met, then allocation will be made from LOT-2 and after exhausting all offers of LOT-1 & LOT-2, still if the location's requirement is not met, then offers under LOT-3 shall be considered.

***"

[Emphasis supplied]

6.4. It is to observe that out of total six (6) TTs offered by the petitioner, five (5) TTs were rejected even at the Technical Evaluation stage. As the petitioner offered such bid under general category, his one TT of 12-16KL capacity is considered "ready TT".

6.5. By way of an affidavit dated 15.07.2022 filed by the IOCL in reply to the

additional affidavit dated 11.07.2022 of the petitioner, it has been affirmed as follows:

"10. That in the Tender Notice, IOCL has invited tender for estimated Tank Truck requirement of 12-16 KL TTs : 48 Nos. and 18-40 KL TTs : 90 Nos. total 138 Nos. of TTs.

11. That pursuant to the Tender Notice, altogether 45 bidders dropped their tender, out of which 41 bids were found to be technically qualified."

However, the position as to actual requirement has further been clarified in the affidavit dated 21.08.2022 filed by the IOCL in the following manner:

"As per IOCL, the following was the requirement of TTs in respect of general category:

12-16 KL ... 17 Nos.

18-40 KL ... 41 Nos.

Total ... 58 Nos."

6.6. On the evaluation of allocation of TTs in LOT-1 (general category) the position of rankings is as under:

Sr.

No.

Name of bidder

Categorised in LOT-1

Total number of qualified TT in

LOT-1 eligible for allocation

Ranking

Allocated TTs in LOT-1

12

to 16 KL

18

to 40 KL

12

to 16 KL

18

KL

and above

Total

1

Sangam Transport

4

8

12

L1A

4

8

12

2

Omm Shree

Transport

4

8

12

L1B

4

8

12

3

Baldev Singh

3

6

9

L1C

3

6

9

4

Pradhan Logistics

3

6

9

L1D

3

6

9

5

Friends Transport Corporation

2

4

6

L1E

2

4

6

6

Annadatri Transport

2

4

6

L1F

1

4

5

7

Pratima Das

2

4

6

L1G

0

4

4

8

MM Carriers

2

4

6

L1H

0

1

1

9

Panda Brothers

2

4

6

L1I

0

0

0

10

Nilendra Kumar

Mahapatra

2

4

6

L1J

0

0

0

11

Maa

Durga

Roadways

1

2

3

L1K

0

0

0

12

Mahesh Sah

1

2

3

L1L

0

0

0

13

Hadibandhu Mohanty

1

2

3

L1M

0

0

0

14

K.G.N. Transport

1

2

3

L1N

0

0

0

15

Mangala Transport

1

2

3

L1O

0

0

0

Total:

17

41

58

6.7. Gleaning through the table, it transpires that the case of the petitioner was considered on merit with others. The evaluation of allocation of TTs in LOT-1 has been made according to ranking prepared in conformity with Clause 1.4 of the NIT. The 8th qualified L1-bidder in general category, namely MM Carriers, has been allotted one (1) TT of 18 KL and above capacity in LOT-1. The total requirement of IOCL is 58 [17 numbers of 12-16 KL capacity TT and 41 numbers of 18-40 KL capacity TT] in general category. Even 9th successful bidder is allocated zero (0) number of TT. With the allocation of one (1) TT in favour of MM

Carriers-L1H, total number of required TTs has been exhausted in LOT-1 category itself. Under such circumstance, there is no scope or occasion for the IOCL to consider any allocation of TT in LOT-2. Therefore, the question of consideration of the case of the present petitioner in LOT-2 does not arise.

7. Widening the scope of challenge as set up in the writ petition, Mr. Devashis Panda, learned counsel for the petitioner by way of written note of submission furnished on 29.08.2022 based on consolidated reply affidavit dated 25.08.2022 sought to argue that the allocation of TTs and issuance of LoAs are in gross violation of reservation policy. The allegation in the written note of submission that "IOCL's reply does not state in clear terms that the reserved quota has been complied with including carried over unfilled quota for SC and ST from last NIT of 2015-16" is itself indicative of fact that no specific pleading has been taken in the writ petition. Moreover, the petitioner had bid in the general category and, as discussed above, he was found at rank serial No.10. Whether reservation policy has been adopted in its right earnest or not does not affect the consideration of the bid of the petitioner on its own facts.

7.1. It has been clearly laid down in *Bharat Singh Vrs. State of Haryana*, AIR 1988 SC 2181 and followed in *Surendranath Ghosh Trust Estate, Kolkata Vrs. State of Orissa*, 2010 (Supp.-II) OLR 847 (Ori) that a party has to plead its case and produce/adduce sufficient material/evidence to substantiate its stand taken in the petition and, in case the pleadings are not complete, the Court is under no obligation to entertain such plea.

7.2. However, by way of an affidavit dated 21.08.2022 sworn to by Sri Nrusingha Charan Sethy, General Manager In-charge (Operations), Odisha State Office, the IOCL has clearly demonstrated that the petitioner does not get successful even if its six (6) TTs are considered qua other Lot No.1 bidders. It is clarified that the allocation in favour of bidders comes up to Serial No.8 and rank of the petitioner fell at Serial No.10. Therefore, the plea of quota, as attempted to be introduced by way of consolidated reply dated 25.08.2022, is not available for the petitioner to be raked up. Noteworthy here to reiterate that the petitioner's bid in respect of five (5) TTs have been found not to be qualified at the Technical Evaluation stage itself. On this score also the attack on the tender process by the petitioner fails.

8. While the scope of judicial review in the tender matters is very limited, this Court in *Bombay Intelligence Security (India) Ltd. Vrs. Union of India*, W.P.(C) No. 29177 of 2021, vide Judgment dated 26.08.2022 held, in the context of contesting tender that,

"the efforts of this Court has to be to adopt the test, i.e. to 'consider whether something has gone wrong of the nature and degree which requires its intervention'."

9. In the result, the writ petition fails and the same is dismissed. With the dismissal of the writ petition, all the interim orders passed in the case stand automatically vacated. Parties are to bear their own costs.

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