

(2022) 04 CAL CK 0071
In the Calcutta High Court
Case No : W.P.A. No. 4391 Of 2022

Plain Cargo Solution (OPC) Private Limited And Another	APPELLANT
Vs	
Indian Oil Corporation Ltd. And Others	RESPONDENT

Date of Decision : 19-04-2022

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 48
Motor Vehicles Act, 1988 — Section 41

Citation : (2022) 04 CAL CK 0071

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Debabrata Saha Roy, Neil Basu, Amit Kumar Nag, Abhishek Nag

Final Decision : Dismissed

Judgement

Sabyasachi Bhattacharyya, J

1. The petitioner no. 2 is the sole director of the petitioner no. 1, which is a woman-run certified MSE (Micro and Small Enterprise) company. The petitioners participated in a tender floated by the Indian Oil Corporation Limited (IOCL), which is the respondent no. 1 herein, on August 25, 2021 for road transportation of bulk petroleum products-black oil for 52 Tank Trucks (TTs) for two years. Corrigenda of the initial tender notice were published on September 20 and 30 and October 20, 2021. The last date for submission of bids, as finally extended, was November 1, 2021. The bid of petitioner no. 1 was submitted on September 20, 2021, for which an acknowledgment receipt was issued by the IOCL.

2. The petitioners allege that on receipt of the petitioner's online bid application, the Assistant Manager (Contracts) ERO, IOCL verbally asked petitioner no. 2 why no RC Book had been provided in respect of the TTs and that the petitioner cited delay in the concerned registration offices in handing over RC Books for all five TTs to the petitioner, apparently due to the then prevailing pandemic situation. According to the petitioners, they received hard copies of the RC Books only in

the first week of December, 2021, after initiating an email communication with the Ministry of Road Transport and Highways, Government of India on November 25, 2021.

3. On February 1, 2022, the IOCL Tender Evaluation Committee sent an e-mail to the petitioners, informing that the candidature of the petitioner no.1-company had been rejected during technical evaluation for non-submission of RC Book of any of the offered TTs.

4. On February 2, 2022, the financial bid was opened and the respondent no. 1 selected 12 bidders and uploaded the tender summary report on February 19, 2022 with status update of the bidders.

5. Challenging such rejection and seeking mandamus directing the respondent no. 1 to accept the petitioners' bid and to issue a Letter of Intent on consideration of the petitioners' financial bid, as well as seeking other consequential reliefs, the petitioners have moved the present writ petition.

6. Learned counsel for the petitioners argues that the petitioners could not submit the RC Books due to no fault on their part, but for laches on the part of the issuing authorities, and should not have been penalized for such non-submission. Moreover, the petitioners had submitted sufficient documents online to prove the prior registration of all five TTs.

7. That apart, it is argued, the bias of the tender was on procuring TTs of latest models and the petitioners' TTs were the newest in the fray, even compared with those of the successful bidders, which entitled the petitioner no. 1-company to get selected as a successful bidder.

8. Learned counsel contends that such rejection of the petitioners' bid on the part of the respondent-authorities was biased and arbitrary, being against the best interest of the Government. Tenders for public utility services ought to be inclusive, to ensure participation of maximum contenders, which was discouraged in favour of some particular bidders in the present case.

9. The petitioners further submit that two of their TTs were registered in Manipur on June 15, 2021 and the other three on September 17, 2021, all of which were prior to November 1, 2021, which was the last date of submission of bids.

10. Learned counsel for the petitioners contends that the petitioners complied duly with the provisions of Section 41 of the Motor Vehicles Act, 1988 (for short, "the MV Act") which provides for registration of motor vehicles, as well as Rule 48 of the Central Motor Vehicles Rules, 1989 (for brevity, "the MV Rules"), which reads as follows:

48. Issue of certificate of registration.—On receipt of an application under rule 47 and after verification of the documents furnished therewith, the registering authority shall, subject to the provisions of section 44, issue to the owner of the motor vehicle a certificate of registration in Form 23 or Form 23-A, as may be

specified in the Notification issued by the concerned State Government or Union Territory Administration within the period of thirty days from the receipt of such an application:

Provided that where the certificate of registration pertains to a transport vehicle it shall be handed over to the registered owner only after recording the certificate of fitness in Form 38 within the period of thirty days from the date of receipt of such an application.

11. Since the thirty days' mandate was not complied by the authorities, it is contended that the petitioners cannot suffer unnecessarily for that.

12. Learned counsel for the petitioner adds that no Smart Card, which is claimed even by the authorities to be the RC Book after its introduction, was asked for in the tender notice. Moreover, since the petitioners produced all relevant documents in their possession to show substantially the valid registration of the five vehicles, the respondent no. 1 acted against its tender notice and principles of Natural Justice in insisting upon further production of the Smart Card. The next best document to the Smart Card, which convincingly proves due registration of the five TTs, is the Registration Certificate which, according to the petitioners' counsel, was submitted by them along with the bid.

13. Learned counsel for the petitioners relies on a three-Judge Bench decision of the Supreme Court, rendered in *Saurav Yadav & Ors. -vs- State of U.P. & Ors.*, reported at (2021) 4 SCC 542, in support of the principle that candidates belonging to any of the vertical reservation categories are entitled to be selected in "Open or General Category" and that if such candidates belonging to reserved categories are entitled to be selected on the basis of their own merit, their selection cannot be counted against the quota reserved for the categories for vertical reservation that they belong.

14. By citing the unreported judgment of a Division Bench of this court dated March 8, 2022 in *IOCL & Ors. -vs- Ganesh Movers and Logistics (P) Ltd. & Anr.*, by which the learned Single Judge's decision was upheld, learned counsel for the petitioners argues that, under similar circumstances, both the said Benches had set aside the rejection of the bids submitted by the petitioners therein on the ground of non-production of Smart Card in view of the tender-issuing authority having not specified clearly in the tender notice the requirements of RC Book and/or Smart Card in addition to Registration Certificate.

15. Thus, it is submitted, the reliefs sought in the present writ petition ought to be granted.

16. Learned counsel for the respondent nos. 1 to 7 relies on a printed chart handed up during arguments to point out that the Notice Inviting Tender (NIT) required two (3% of total 52 TTs) candidates to belong to the MSE-woman category, both of which were filled up from the five qualified bids under the said category. Even the general quota of the MSE candidates, which had nine

vacancies (18% of total NIT requirement of 52 TTs), had been fully allotted out of the 51 qualified candidates. Although four out of the required nineteen TTs under the purely general (non-MSE) category remained unallocated, it is argued that there cannot be reverse reservation in the general category, in view of specific stipulation of the relevant categories in the NIT. Thus the ratio laid down in the Supreme Court judgment cited by the petitioners is not attracted to the present case, learned counsel contends.

17. There were several distinguishing features between the present case and the cited judgments, it is argued.

18. The bid of the present writ petitioner no. 1 was rejected at the preliminary stage of technical evaluation itself, unlike the case in which the Division Bench of this Court had delivered the cited judgment, where the bids passed muster at the technical stage but were subsequently rejected on technical grounds at the financial evaluation stage. Moreover, unlike the said reported case, in the instant case the NIT clearly stipulated the requirement of production of Registration Certificate as well as RC Book, which is equivalent to the current Smart Card, none of which were submitted by the petitioner at the time of submission of bid and/or before the closing date of such submissions.

19. The petitioners did not submit any pre-bid query, as provided for in the NIT, it is argued, to clarify the requirements of documents for valid bids, but participated in the tender process and have challenged the same only subsequent to opening of the bids, upon knowing the negative outcome of the petitioners' bid. By now, learned counsel for the respondent nos. 1 to 7 submits, work orders have already been issued to the successful bidders.

20. Thus, it is submitted, the tender process, which is for a public utility project, ought not to be reversed or upset at this belated stage on the frivolous and flimsy grounds taken by the petitioners.

21. Upon hearing both the contesting sides, two obvious facts emanate from the materials on record.

22. First, the petitioners had admittedly not submitted the RC Books of the five TTs offered by them in the tender, although the NIT required production of Registration Certificates and RC Books.

23. Secondly, hard copies of the Smart Cards were issued to the petitioners after the last date of submission of the bids.

24. Clause IV of the NIT, in sub-clauses (a) and (b) thereof, provides the PQ (Pre-Qualification Criteria) for General Bidders and SC/ST Bidders respectively. There is no separate classification provided for MSEs/ Woman-owned MSEs or for any other category than General and SC/ST. Hence the petitioner, not belonging to the SC/ST category, comes within the purview of General Bidders for the purpose of satisfying PQ specifications. It is clearly stipulated in the Remarks column, on the row corresponding to the Description "RTO registration", that RC Book copy is

to be submitted for Tank Truck.

25. Again, against the second bullet under Item No. 4 of Clause VII (Submission of Tender) of the NIT, copies of Valid RTO Registration Certificate for each of ready TTs offered, attested by Gazetted Officer/Notary Public, finds place among the list of documents to be submitted along with bid.

26. Item no. 1 of Clause B (Evaluation of Tenderers) of the Tender Terms and Conditions clearly provides that the public tender is floated in two-bid system, that is, technical bid and price bid. Technical bid shall be opened first on the scheduled date and shall be evaluated. Price bids of only the technically qualified tenderers, based on technical evaluation, shall then be opened on a notified date.

27. Among the documents produced by the petitioners, those closest to Registration documents are the ones annexed at pages 40 to 44 of the writ petition. Those are printouts of the vehicle particulars issued by the Motor Vehicles Department of various states, where the five vehicles offered by the petitioners were supposedly registered, being Nagaland (Kohima RTO) and Chhattisgarh (Raipur RTO). In both the printouts of the Nagaland documents, beside the caption 'VEHICLE PARTICULARS', the words "FOR INTERNAL USE ONLY" are printed within parentheses. On all the three documents of Chhattisgarh, at the right-hand bottom of each, it is written in fine print: "The document can't be used a MV document in the Vehicle."

28. These instructions and the caption "VEHICLE PARTICULARS" in each of the five documents clearly indicate that those are not valid 'Registration Certificates', let alone being copies attested by any Gazetted Officer/Notary Public.

29. Admittedly, the petitioners did not produce any Smart Card or RC Book (which are apparently interchangeable terms as per submissions of both sides) in any form in respect of any of the offered five TTs.

30. Hence, the petitioners failed to comply with the specific Pre-Qualification Criteria and Terms and Conditions of the NIT-in-question of producing the RC Book / Smart Card and Registration Certificate or even either of the two.

31. On the other hand, the petitioners' argument, that the newest vehicles would get preference, which would apparently clinch the issue of qualification in favour of the petitioners, is basically a non-issue. In the PQ and as per Item no. 10 of the Terms and Conditions of the Tender Notice, the age of the Tank Trucks offered only required that the Date of Manufacture as mentioned in the RC Book of the TTs shall not be before January 1, 2011 and the TTs should be necessarily of BS-III or higher model. The manufacturing date was, thus, merely a cut-off date and not a determinant qualification criterion at all. That apart, since neither RC Books nor Smart Cards were admittedly produced by the petitioners, there was no question of meeting even the age criterion.

32. Regarding the novelty of the TTs, obviously subsequently-manufactured vehicles would be newer; but the cut-off date of filing the supporting documents

was November 1, 2021, that is, the last date of submission of the bids. If currency of the date of manufacture was the sole criterion of qualification, devoid of the cut-off date, the same would be a meaningless exercise, since trucks manufactured at any juncture subsequent to the last bid-submission date would be even newer.

33. Clause 17 of the Terms and Conditions of the NIT stipulates that, notwithstanding any other condition/provision in the tender documents, bidders are required to submit complete documents pertaining to the PQC along with their offer. Failure to meet the PQC will render the bid to be summarily rejected and the IOC reserves the right to complete the evaluation based on the details furnished by the bidder, with or without seeking any additional supporting documents/clarifications.

34. Again, Clause 6 of the Terms and Conditions, in no uncertain terms, provides that Tenders not meeting the tender terms and conditions or incomplete in any respect or with any additions/deletions or modifications are liable to be summarily rejected without any further communication to the tenderers and decision of IOCL in this respect shall be final and binding.

35. Clause 12 of the NIT provides for Pre-Bid Meeting and advises the bidders that no pre-bid meeting shall take place in person. All bidders intending to raise queries shall do so either through e-mail to the contact person or through 'seek clarification' option on e-tender portal, before the due date and time of pre-bid meeting.

36. It is further detailed in the said clause that the salient features of the techno-commercial issues in tender will be informed in the pre-bid meeting and clarification required by the tenderer will be answered. Tenderers should submit all the details and enclosures as has been asked for in the tender form. Not submitting any information/enclosure sought for may be a ground for rejecting the tender, Clause 12 further reiterated.

37. The petitioner no. 2 on behalf of the petitioner no. 1, with her eyes open, participated in the tender process without satisfying all requisites as per the tender notice, choosing not to make any pre-bid enquiry or to participate in the pre-bid meeting and, only upon rejection of her bid on technical evaluation, played turn-coat and preferred the present writ challenging the tender process itself.

38. No mala fides, arbitrariness and/or bias whatsoever, on the part of the authorities, have been established by the petitioners at all. It is well-settled that merely because the outcome of the tender process does not suit a single bidder or even a few candidates, the entire tender process cannot be reversed, all the more when the tender was issued for a work of public nature.

39. In addition, in the present case, the work orders in terms of the tender have also been issued to the successful bidders. A reversal at such a mature stage

would palpably enure to the benefit of none but the petitioners, that too to the detriment of all other candidates and the tender-issuing authority.

40. In view of the petitioners' bid having been rejected by the respondent authorities well within their authority and discretion and fully as per the specific terms and conditions of the NIT, there is absolutely no scope of interference by the writ court.

41. Insofar as the cited Division Bench judgment is concerned, paragraph no. 17 thereof records that after communicating to the respondents therein 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.

42. As opposed to the said case, in the instant case the petitioners' bid was rejected at the technical stage itself, which debarred the petitioners from participating at the subsequent financial stage at all.

43. Again, paragraph no. 16 of the Division Bench judgment indicates that the requirements of RC Book and/or Smart Card in addition to Registration Certificate were not specified in the NIT in that case, in which circumstance it was observed that, in view of production of the Registration Certificate, further production of the RC Book/Smart Card was not necessary. However, in the present case, both the RC Book and Registration Certificate of the vehicles were specifically required as per the PQ and the Terms and Conditions of the NIT, thus altering the factual matrix of the present case from that of the Division Bench.

44. At paragraph no. 24 of the Single Judge decision, from which the Division Bench appeal arose, it was recorded that the bidders in the said case had exercised their right to make pre-bid enquiries, as opposed to the present case.

45. It is patently doubtful, for reasons discussed above, as to whether the documents produced by the present petitioners met the criterion of production of the actual Registration Certificates, attested by Gazetted Officer / Notary Public, as stipulated in the tender notice.

46. The proposition laid down by the three-Judge Bench of the Supreme Court in Saurav Yadav's Case (*supra*) is not attracted to the present case at all. The petitioners specifically applied under the woman-run MSE category, which was a reserved category. The said quota of 3% of the requirement, which comes to two vacancies, was filled up by eligible candidates. Even the general vacancies of the MSE category, totalling nine (18% of total 52) in number, were filled up by qualified candidates.

47. Moreover, the basis of the claim of the petitioners that the petitioner no. 1 would have succeeded in the tender process was the alleged novelty of the date of registration of the petitioners' TTs. However, as already discussed above, the age of the TTs was not a determinant criterion for selection at all but was merely a stipulation as to the cut-off date, TTs manufactured before which would not

qualify. Hence, the “newness” or novelty of the petitioners’ TTs would not carry an edge over the competition, as opposed to such argument of the petitioners. Thus, in the first place, there was no question of the petitioners having any edge over the other contenders on the basis of the recent dates of manufacture of their TTs, which might have afforded the petitioners a chance to be selected even in the general category.

48. On the other hand, the petitioners failed to meet the technical criteria and were eliminated, well within the authority of the respondents as per the tender notice, at the preliminary technical stage itself, thereby ruling out any chance of the petitioners participating at the financial bid or price bid stage at all, let alone the petitioner no. 1 being selected as a successful candidate.

49. In such view of the matter, there is no ground of interference with the legitimate decision taken by the respondent-authorities to reject the writ petitioners’ bid at the technical stage itself. Such decision and its consequences were well within the law and the authority of the respondents as per the terms and conditions of the notice of the impugned tender.

50. Hence, the writ petition fails. WPA No. 4391 of 2022, along with connected pending application(s), if any, are dismissed without, however, any order as to costs.

51. Urgent certified copies of this order, if applied for, be supplied by the department upon compliance of all requisite formalities.