

(2000) 10 MAD CK 0015

In the Madras High Court

Case No : Writ Petition No. 6627 of 2000

R. Selvaraj, Velavan Transport and V. Kesavan

APPELLANT

Vs

The Deputy General Manager (in-charge) Indian Oil Corporation Ltd.

RESPONDENT

Date of Decision : 24-10-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Citation : (2000) 10 MAD CK 0015

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : K.A. Ravindran and S. Vijaya Kumar, for the Appellant; Meera Gupta, Addl. Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S. Jagadeesan, J.—The Petitioners are the registered Transport contractors with the Respondent herein. Their existing contract came to an

end on 15.4.2000. The Respondent issued a notification, calling for the tender from the transport operators. The said notification was published in

the Tamil Daily on 29.3.2000. The Petitioners applied for the tender forms by paying a sum of Rs. 1,000/-and also by depositing the earnest

money of Rs. 10,000/-. After perusal of the tender conditions, they found that Clause 9(c) of the tender condition has been newly introduced by

the Respondents enabling them to give preference to the truck owner/tenderer-and among men the trucks less man five years old. Further the age

of the vehicle was restricted that the same should not exceed 12 years on the date of opening the tender. Now the writ petition has been filed

challenging the said Clause 9(c) of the tender conditions to declare me same as

unreasonable, discriminatory, arbitrary and ultra vires.

2. Mr. Ravindran, the Learned Counsel for the Petitioners contended that all along there is no restriction with regard to the age of the vehicle as the

Petitioners are being the owners of the trucks of the year 1981, 1984, 1985 and 1986 models. By virtue of the restriction with regard to the age of

the truck, the Petitioners are deprived of their livelihood and moreover, the new clause has been introduced to favour a few. It is further contended

by the Learned Counsel for the Petitioner that in the publication of the notice, calling for the tender, the tender condition had not been published

and no restriction had been mentioned with regard to the persons who can apply for the tender or eligible to submit his tender. When there is no

qualification mentioned in the notification, calling for the tenders, it is not open to the Respondents to impose such condition in the tender form.

Because had these conditions been published in the publication calling for the tender, the Petitioner could have avoided the purchase of the tender

form by paying Rs. 10,000/- knowing the eligibility and also could have avoided the deposit of Rs. 10,000/-. Now though the earnest money can

be refunded, but, still the sum of Rs. 10,000/- paid towards tender forms is waste so far as the Petitioners are concerned. Hence for the present

the said condition cannot be enforced. As the contract of transport is only for one year, subject to the renewal of one more year, at least for the

current year the condition should not be implemented.

3. The Respondents have filed counter affidavit wherein it is stated that the stipulation regarding the age of the vehicle specifying that it should not

be more than 12 years old is clearly listed in the tender condition. The mere reason that the same has not been included in the press notification,

calling for the tenders does not bar IOC to include the same in the tender conditions, as it was considered necessary to have trucks of less than 12

years old for rendering proper service to the company's customers. Therefore no discrimination or mala fides can be attributed to the Respondents

by introduction of Clause 9(c) in the tender conditions. Further it is stated in the counter that the introduction of Clause 9(c) was a commercial

decision based on the need to render satisfactory service to IOC's customers and eliminate usage of very old model trucks which do not give

trouble free service and therefore cannot be termed as violative of Article 14 or

Article 19(1)(g) of the Constitution of India. If the trucks of more than 12 years old are considered for rendering service to the company's customers, that will cause environmental hazard in terms of pollution and oil consumption and this will run counter to" the concept of oil conservation propagated and practiced by oil industry and the Government of India.

4. The Learned Counsel for the Respondents reiterated what is stated in the counter affidavit.

5. I carefully considered the contention of the Learned Counsel on either side. In the notification calling for the tender, the condition imposed is that

the tenderer must be the owner of one Bitumen truck. The other Bitumen trucks for which the contract is to be issued may be of his own or he

must have control over the same. The registered contractors as well as the already operating contractors with the trucks will be given preference.

With these conditions the notification has been issued. Admittedly the Petitioners have paid the necessary fees for the tender forms and purchased

with the hope that they are eligible to submit the tender for the period for which the notification has been issued.

6. Only after the purchase of the tender forms the Petitioners found that Clause 9(c) of the tender condition is imposing the additional restrictions.

Clause 9(c) is as follows:

Clause 9 (c) subject to fulfilment of other terms and conditions. IOC would give preference to firstly Bitumen Truck Owner tendered among them

to Bitumen Trucks less than 5 years old. Age of vehicle should not exceed 12 years on the date of opening tender.

As per the above condition, first of all the age of the vehicle should not exceed 12 years. The second is that preference will be given to the truck

owner. The third is among the truck owners, those who are having the trucks, less than five years old trucks will be preferred. The contract period

is for the period 2000-2001, subject to renewal for further period of one year. So virtually now the tender period of one year will come to an end

by March, 2001.

7. When the notification issued by the Respondents, calling for the tenders is silent with regard to these conditions, it is for this Court to consider

whether the new conditions can be imposed in the tender form. As stated already, the notification calling for the tenders merely mentions that the

tenderer should own at least one Bitumen truck in his name. So far as the other trucks are concerned, the tenderer may be the owner or must have control over the same. The Indian Oil resellers, followed by the Indian Oil LPG distributors will be given preference. Apart from this, the registered as well as the existing contractors with the trucks will be given preference. Hence as per the notification, calling for the tenders, the conditions are as stated above. Apart from that, no other condition was specified in the notification. The Petitioners have applied for the tenders and also obtained the same.

8. Only after obtaining the tender forms, they came to know about the Clause No. 9(c) which gives general preference to truck owners and special preference to the owners of the trucks the age of which is below five years. The further restriction is with regard to the age of the truck as it should not exceed 12 years.

9. When the notification, calling for the tender did not specify any of such restrictions, the persons like the Petitioners purchased the tender forms only on the basis of the publication calling for the tenders. When that be so, they cannot be taken by surprise by imposing certain other conditions in the tender form which the Petitioners were not put on notice before ever the tender forms were purchased. As rightly contended by the Learned Counsel for the Petitioners, if such conditions had been notified in the publication, calling for the tender, the Petitioners might have refrained from seeking the tender form. The Petitioners expecting that the conditions imposed in the notification are the conditions to submit the tender, they have purchased the tender forms. But of course it is not the case of the Petitioners that any new condition had been imposed subsequent to the receipt of the tender forms of the Petitioners. When the Petitioners purchased the tender forms they are bound by the conditions imposed therein.

10. Still it has to be considered as to whether the condition imposed under Clause 9(c) can be validly upheld. When the authorities impose certain conditions or regulations, it should have the nexus with the object that is to be achieved. As stated in the counter affidavit, if it is to satisfy the need of the IOC dealers and to prevent the pollution, the age of the vehicle has to be restricted to 12 years, there is absolutely no explanation for the

Respondents to give the preference to the contractors whose vehicles are of the

age of five years. There cannot be a classification among the same group of classification. When once the age of the vehicle is restricted to 12 years, there should be uniformity that the tenderers who are having the vehicle less than 12 years old are entitled to submit their tender. They should be treated equally. There cannot be a preference among themselves by further restriction of the age of the vehicle to five years. In my opinion, it will be an arbitrary action on the part of the Respondents when the counter itself is silent with regard to the nexus in imposing of conditions with the object that is going to be achieved. There is absolutely no reason or explanation in the counter as to why there should be a different category in respect of the vehicles i.e., one category - age below five years for preference and next category-below 12 years for general.

11. For the reasons stated above, the impugned order is liable to be set aside on the following two grounds:

(i) The new clause has been introduced in the tender condition which is not specified in the notification calling for the tender pursuant to which the

Petitioners have purchased the tender forms; and

(ii) The other is restricting the age of the vehicle for preference is arbitrary, since the same has no nexus with the object that is to be achieved by

the Respondents.

12. Hence the impugned condition Clause 9(c) in the tender form is quashed and the writ petition is allowed.

13. However, it is open to the Respondents to include those conditions in the notification calling for the tenders for the future period 2001-2002;

that too, only in respect of the general restriction with regard to the age of the vehicle without any preference among them.