
(2007) 05 DEL CK 0262

In the Delhi High Court

Case No : Writ Petition (C) No's. 2512 and 2882 of 2007

Vijendra Kumar

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd. and Another

Sunil Bansal Vs Bharat Petroleum Corporation Ltd. and
Another

RESPONDENT

Date of Decision : 10-05-2007

Acts Referred:

Citation : (2007) 2 CTLJ 168

Hon'ble Judges : S.L. Bhayana, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Rakesh Tiku and Puneet Aggarwal, for the Appellant; Sanjay Kapur and Zubeda Begum, in W.P.(C) No. 2512/2007 and Rajiv K. Garg and Ashish Garg for Respondent No. 1 and Zubeda Begum, in W.P.(C) No. 2882/2007, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—This judgment decides the above two writ petitions wherein common issue, regarding the applicability of Euro II and Euro III norms (also known as Bharat II and Bharat III norms) to vehicles plying in the National Capital Territory of Delhi, arises for consideration. The question has arisen in the context of stipulations in the tender document relating to permissibility of vehicles to be used for the purpose of contract for transportation of LPG cylinders.

2. Vijendra Kumar, petitioner in WP(C) No. 2512/2007, is a transport contractor. He assails a condition in tender No.1PG/TPT/NZ/204 which reads as 'The tenderers to ensure that model of the quoted trucks should not be prior to the year 1996 and all statutory requirements as specified by the Transport Department, Delhi State from time to time are complied with' as not being in conformity with the amendments in the Central Motor Vehicles Rules and not being in consonance with directions given by the Hon'ble Supreme Court regarding commercial vehicles conforming to Bharat II and Bharat III norms. It is

the petitioner's case that as per the direction issued by respondent No. 2 Govt. of NCT of Delhi, commercial vehicles manufactured after 1.4.2005 could be registered in Delhi if they conformed to Bharat Stage III norms. However trucks having national permit, would continue to be governed by Bharat Stage II norms for plying on Delhi roads.

3. Petitioner, accordingly seeks a writ of prohibition directing the respondent No. 1 not to consider the tender of any contractor whose vehicles are not conforming to the requirements as per existing law and in particular the Motor Vehicles Act and the Central Motor Vehicles Rules. A writ of mandamus is further sought to the respondent No 1 to strictly follow Motor Vehicles Act and Central Motor Vehicles Rules and to issue a clarification amending the condition of the tender so as to call for only such vehicles which are conforming to Bharat Stage II and Bharat Stage III norms.

4. Notice in the above petition had been issued on 4.4.2007. counter affidavit has been filed by respondent No. 1. Ms. Zubeda Begum, counsel for respondent No. 2 Government of NCT of Delhi had also sought instructions and she has also been heard in opposition to the petition.

5. While this petition was pending, another writ petition bearing WP(C) No. 2882/2007 was filed and came up for admission on 23.4.2007. Petitioner Sunil Bansal filed the second writ petition aggrieved by a tender condition in respect of tender No.BPCL/LPG/PKD/NR/2007/03/Piyala invited for transportation of LPG cylinders Ex-LPG Plant Piyala to the Depot markets in Delhi. He also contended that respondent No. 2 had written letters to the oil companies including respondent No. 1 Bharat Petroleum directing them that four wheeled vehicles plying within NCT of Delhi must conform to Bharat III norms and four wheeled transport vehicles plying on inter state permit, national permit or all India tourist permit within jurisdiction of NCT of Delhi and certain other selected cities would continue to be governed by Bharat II emission norms. Respondent No. 1 had assured respondent No. 2 vide its letter of 7.2.2007 that they would be amending the tender condition in future contracts.

6. Petitioner is aggrieved as the tender condition did not require conforming with Bharat Stage II and Bharat Stage III norms despite the decision in the letters referred to earlier. Petitioner Sunil Bansal also sought a writ of prohibition directing respondent No. 1 not to consider the tender of any contractor whose vehicles did not conform to the existing law and the Central Motor Vehicles Rules. Further that the vehicles should be compliant either with Bharat Stage II or Bharat Stage III norms. A writ of mandamus was also sought commanding respondent No. 1 to strictly follow the Motor Vehicles Act and Central Motor Vehicle rules and to consider only those tenderers whose vehicles conform with Bharat Stage II and Bharat Stage III norms.

7. Petitioners in the Writ petitions were represented by Mr. Rakesh Tiku. With the consent of the parties, both the writ petitions were taken up for disposal together

as the issue involved in the petitions was the same.

8. Learned Counsel for the petitioners Mr. Rakesh Tiku submitted that respondent No. 2 Govt. of NCT of Delhi had specified that commercial vehicles manufactured after 1.4.2005 could be registered in Delhi if they were conforming to Bharat Stage III norms. However, commercial vehicles having national permit, inter-state permit or all-India tourist permit would continue to be required to be governed by Bharat Stage II norms. As noted, petitioner's submission is that respondent No. 1 HPCL in WP(C) No. 2512/2007 and BPCL in WP(C)No. 2882/2007 were required to review their existing contracts and also make necessary changes in the tender document, they neither reviewed the existing contracts nor made amendments in the tender document being issued to ensure compliance with above requirements. Petitioners, Therefore, urged that respondent No. 1 was trying to find out ways to flout the norms prescribed by Govt. of Delhi, respondent No. 2. Mr. Tiku referring to the tender condition mentioned in para 3 above, which is the subject matter of WP(C) No. 2512/2007, submitted that the same left ample scope for entertaining ineligible bidders. It was, Therefore, not conducive to the requirement of conforming to the emission norms as intended by the Govt. of NCT of Delhi. Mr. Tiku submitted that on a proper interpretation of the provisions of the Motor vehicles Act, Central Motor Vehicles Rules, the notification issued there under and the directions of the Supreme Court, only commercial vehicles manufactured after 1.4.2005 and conforming to Bharat Stage III norms can ply in Delhi. Further, commercial vehicles having national permits were also required to conform to Bharat Stage II norms. Mr. Tiku urged that respondent was required to strictly adhere to the rules and consider only those vehicles registered after 1.4.2005 conforming to Bharat Stage III norms as per the notification of 20.10.2004. Finally it was submitted that petitioner does not press his challenge to vehicles already registered not conforming to Bharat II and Bharat III norms and would be satisfied if requirement of conforming to Bharat Stage II norms was enforced.

9. Respondent No. 1 in its counter affidavit, has averred that the notification dated 20.10.2004 relied on by the petitioner is with respect to emission norms and is applicable only in respect of four wheel vehicles, which are manufactured after 1.4.2005. The notification did not stipulate that all four wheel transport vehicles plying in Delhi should conform to Bharat Stage II and Bharat Stage III norms. Mr. Sanjay Kapur and Ms. Zubeda Begum submitted that the only restriction as per the direction of the Hon'ble Supreme Court is that commercial vehicles, which were over 15 years old, should not be allowed to ply on Delhi roads. Ms. Zubeda Begum relied on the judgment of the Supreme Court in M.C. Mehta v. Union of India in WP(C) No. 13029/1986 dated 28th July, 1998 and submitted that four wheel vehicles including taxis, which were 15 years old by October 1998, were not to be permitted to ply on Delhi roads. Ms Zubeida Begum, counsel for Respondent No. 2 further stated that for Commercial and heavy vehicles, Bharat II norms have been introduced w.e.f. 24th October 2001.

10. We have perused the notifications in question as also the directions given in M.C. Mehta's (supra) case wherein the Supreme court realizing the urgency and importance of protection and improvement of the environment and to improve the quality of air and reduce vehicular pollution had approved the measures proposed by the committee and the time frame there for. We notice that as per the notification issued by the Ministry of Shipping Road Transport and Highways (Department of Road Transport and Highways), Govt. of India dated 20.10.2004, only vehicles manufactured after 1.4.2005, are required to comply with Bharat Stage III norms. Secondly, as per the directions issued by the Supreme Court in M.C. Mehta (supra), commercial vehicles, which are over 15 years old by 2nd October 1998, cannot ply on Delhi roads. Taking into consideration the order of the Supreme Court and the notification dated 20.10.2004, we are of the view that commercial vehicles having national permit, inter-state or all-India tourist permit and are within 15 years from their date of registration, can ply on Delhi roads. These commercial vehicles need not comply with Bharat Stage II norms if they are manufactured prior to 1.4.2005. Once they are more than 15 years old from their date of registration, they will not be permitted to ply on Delhi roads and, Therefore, will be phased out in a progressive manner. Further, commercial vehicles, which sought to be registered after 1.4.2005 in Delhi, have to conform to Bharat Stage III norms. We may also note that the Division Bench of this Court in WP(C) No. 1349/2007 titled Dev Raj v. Union of India and Ors. had declined to entertain a petition filed seeking directions to the respondents and the public sector undertaking not to enter into any contract for utilizing services of goods vehicles that do not comply with Euro II or Euro III norms by holding that "the Supreme Court was already examining and monitoring the issue of vehicle pollution and implementation of its directions to restrict plying of commercial vehicles including taxis. It was open to the petitioner to approach Bhure Lal Committee and if required, the Supreme Court". The petitions could have been disposed off on the above basis.

11. We have, however, chosen to consider the submissions of the petitioners since it was sought to be urged that the Govt. of NCT of Delhi was not following and observing the decisions taken and directions given by itself. Apart from the fact that respondents have the discretion and freedom to formulate the tender terms. Reference may be invited to Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, , wherein the Supreme Court held that, "State can choose its own method to arrive at a decision and it can fix its own terms of invitation to tender and that is not open to judicial scrutiny". In the present case, we find that petitioner has not been able to make out a case for interference in the exercise of writ jurisdiction. It cannot be said that the tender conditions as framed by the respondents are violative of the norms and notifications issued under the Central Motor Vehicles Rules or the directions of the Supreme Court. The decision to permit vehicles which are less than 15 years old, even if they do not conform to Bharat Stage II norms, subject to the condition that no fresh registration of vehicles not conforming to Bharat Stage II norms would be granted after

24.10.2001 and vehicles registered after 1.4.2005 would conform to the Bharat Stage III norms is intended to phase out old vehicles in a progressive manner while addressing the concern of adhering to emission norms to control vehicular pollution.

The writ petitions have no merit and are dismissed.