

GAHC010014182024



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/378/2024

NABANITA DAS AND 3 ORS
WIFE OF SRI SHAILEN KALITA,
RESIDENT OF HOUSE NO. 11,
MANDIR PATH, JAYANAGAR, BELTOLA,
DISTRICT- KAMRUP(M), ASSAM.

2: JRD JEWELS PVT. LTD.
A PRIVATE LIMITED COMPANY
REGISTERED UNDER THE COMPANIES ACT

HAVING ITS REGISTERED OFFICE AT HOUSE NO. 20

ADARSHPUR BYE LANE-1

KAHILIPARA
GUWAHATI- 781019
REPRESENTED BY ITS DIRECTOR SRI DEBASHIS BAKSHI
59 YEARS.

3: BAJRANG LOGISTICS
A REGISTERED PARTNERSHIP FIRM
HAVING ITS REGISTERED OFFICE AT BAJRANG AUTOMOTIVE LLP

NH 37
BEBEJIA
KACHAMARI

NIJ DIMAU
DISTRICT- NAGAON
ASSAM
REPRESENTED BY ITS AUTHORISED PARTNER
SRI ANIL KUMAR CHOUDHURY
59 YEARS.

4: NE LOGISTICS
A REGISTERED PARTNERSHIP FIRM
HAVING ITS REGISTERED OFFICE AT BAJRANG AUTOMOTIVE LLP

NH 37
BEBEJIA
KACHAMARI

NIJ DIMAU
DISTRICT- NAGAON
ASSAM
REPRESENTED BY ITS AUTHORIZED PARTNER SRI AAYUSH CHOWDHURY
32 YEARS

VERSUS

THE UNION OF INDIA AND 2 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF PETROLEUM
AND NATURAL GAS,
NEW DELHI.

2:THE EXECUTIVE DIRECTOR
INDIAN OIL AOD STAT OFFICE
SECTOR-III
NOONMATI
GUWAHATI.

3:THE CHIEF GENERAL MANAGER (LPG)
INDIAN OIL AOD STATE OFFICE
NOONMATI
GUWAHATI

For the Petitioner(s)	: Mr. D. P. Borah, Advocate
For the Respondent(s)	: Mr. M. K. Choudhury, Sr. Advocate
	: Mr. P. Bharadwaj, Standing Counsel

Date of hearing : 24.01.2024

Date of Judgment : 24.01.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Mr. D. P. Borah, the learned counsel appearing on behalf of the Petitioners and Mr. M. K. Chodhury, the learned Senior counsel assisted by Mr. P. Bharadwaj, the learned counsel appearing on behalf of the Respondent Nos. 2 and 3. None appears on behalf of the Respondent No.1 on call.

2. The present writ petition has been filed by the Petitioners challenging the Notice Inviting e-Tender issued by the Indian Oil Corporation Ltd. for transportation of Indane LPG cylinders in vertical position on unit rate basis Ex-North Guwahati BP on the ground that Clause 14 of the tender schedule of the Notice Inviting Tender stipulates that if the last date of bid submission is extended after publication of the tender, vehicles having date of registration up to the last date of bid submission (as per original tender document) shall only be eligible for participation.

3. From the materials on record, it reveals that the Indian Oil Corporation Ltd. had issued the said Notice Inviting E-Tender in Two Bid System (Part A : Technical Bid with Commercial Terms and Part B : Price Bid) from company, partnership/proprietorship firm, Co-operative Society meeting the minimum PQC (pre-qualification criteria) for award of contract for Transportation of Indane LPG Cylinders in vertical position on unit rate basis, Ex-North Guwahati Bottling Plant for a period of three years initially with a provision of two yearly extension of one year each at the same rate, terms and conditions at sole discretion of the Indian Oil Corporation.

4. It is relevant to take note of that the tender in question was published on

24.11.2023. The bid submission start date was 22.12.2023 and the last date of submission of the bid was 01.01.2024. It was also mentioned that the bid opening date was on 03.01.2024. The record further reveals that a corrigendum was issued for extension of the critical dates as per the e-Tender on 21.12.2023 whereby the bid submission date was extended to 20.01.2024 and the bid submission last date was also extended to 31.01.2024. Further to that, the bid opening date was fixed on 02.02.2024. The Petitioners herein are aggrieved with Clause 14 of the tender schedule which stipulates the maximum age of the quoted trucks. The said Clause 14 is quoted hereinbelow:

14	<u>Maximum Age of quoted trucks</u>	<p><i>The maximum age of any quoted truck (as reckoned from the month & year of manufacturing mentioned in RTO Registration) should not exceed 14 years (concerned State office to change in case local laws of the particular location/State prescribes age/model limit even less than 14 years) as on the closing date of this tender.</i></p> <p><i>If last date of bid submission is extended after publication of tender, vehicles having date of registration up to last date of bid submission (as per original tender document) shall only be eligible for participation.</i></p>
----	-------------------------------------	---

5. From a perusal of the said quoted clause, it reveals that the maximum age of any quoted truck (as reckoned from the month and year of manufacturing mentioned in RTO Registration) should not exceed 14 years as on the closing date of the said tender. It was also mentioned that the concerned State Office to change in case local laws of a particular

location/State prescribes age/model limit even less than 14 years. Further to that, it was made clear that if the last date of the bid submission is extended after the publication of tender, vehicles having the date of registration up to the last date of bid submission (as per the original tender document), that would be 01.01.2024 shall only be eligible for participation. It is the case of the Petitioners herein that they have booked various vehicles on 11.01.2024 and those vehicles are likely to be delivered to the Petitioners within 15 days as stated by the commercial vehicle dealer of TATA Motors in question and as such, the vehicles having the date of registration up to the last date of bid submission on 01.01.2024 deprives the Petitioners to participate in the said tender process. In that regard, the learned counsel appearing on behalf of the Petitioners has placed before this Court the documents enclosed as Annexure 5, 5A, 5B and 5C which shows that on 11.01.2024, the Petitioners herein in their individual capacities have booked various vehicles by payment of advance amount and it was mentioned therein that the vehicles were likely to be delivered within 15 days. The learned counsel for the Petitioners has also drawn the attention of this court that in the pre-bid meeting, the said question was raised and thereupon representations were also submitted by the Petitioners to the concerned Respondent Authorities thereby requesting that the vehicles having the date of registration up to the last date of bid submission in terms with the corrigendum be accepted. The said request having not been taken into consideration, the Petitioner therefore has approached this Court.

6. I have also heard Mr. M. K. Choudhury, the learned Senior counsel appearing on behalf of the Respondent Nos. 2 and 3 who submitted that the Respondent Authorities being the authors of the tender documents are in the

best position to adjudge the requirements and as such had put the said Clause in the said tender condition. He therefore submitted that unless and until the said tender condition is grossly arbitrary, irrational and unreasonable, the question of interference by this Court does not arise. In that regard, the learned Senior counsel has referred to the judgment of the Supreme Court in the case of **Afcons Infrastructure Private Limited Vs. Nagpur Metro Rail Corporation Limited and Another reported in (2016) 16 SCC 818** and more particularly referred to paragraph No.15 of the said judgment. The learned counsel further referred to the judgment of the Supreme Court in the case of **Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers Vs. New J.K. Roadways, Fleet Owners and Transport Contractors and Others reported in (2021) 16 SCC 808.**

7. M. K. Choudhury, the learned Senior counsel appearing on behalf of the Respondents has also submitted on instructions that in view of a circular of the Engineering Department H.O. dated 03.10.2023, if the pre-qualification criteria is changed, then the Respondent Authorities would have to cancel the entire tender process which would again cause great difficulty to the Respondent Authorities in the transportation of the LPG cylinders.

8. This Court had duly taken note of the materials on record as well as the circular dated 03.10.2023 and had also given due consideration to the submission made.

9. A perusal of the materials on record as well as the submissions made by the learned counsel for the Petitioners, the question therefore arises as to whether this Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution in respect to the Clause-14 of the tender schedule

which mandates that irrespective of the tender in question being extended, the vehicles having registration as on the last date as per the original tender document would be taken into consideration. In that regard, this Court finds it very pertinent to take note of the judgment of the Supreme Court in the case of **Afcons Infrastructure Limited (supra)** wherein the Supreme Court had observed that the owner or the employer of a project having authored the tender document is the best person to understand and appreciate its requirement and interpret its documents. The Constitutional Court must defer to this understanding and appreciation of tender documents unless there is a malafide or perversity or understanding or the appreciation or in the application of the terms of the tender conditions. It was also observed that though it is possible that the owner or the employer of a project may have given interpretation to the tender documents that is not acceptable to the Constitutional Courts, but that by itself is not a reason for interfering with the interpretation so given. Further to that, in the judgment of the Supreme Court in the case of **Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers (supra)**, the Supreme Court made it very clear that invoking of the powers of judicial review in matters as to the tenders or awards of contract certain special feature should be borne in mind that the evaluation of tenders and awarding of contracts are essentially commercial functions and the principles of equity and natural justice stay at a distance in such matters. It was also observed that the authority who authors the tender document is the best person to understand and appreciate its requirements and its interpretation should not be second guessed by the Court in judicial review proceedings.

10. In the backdrop of the above propositions of law, the question therefore

arises as to whether this Court in the present facts should entertain the instant writ petition as regards the challenge to the Clause 14 of the tender schedule. The Respondent IOCL authorities had specifically mandated that if the last date of bid submission is extended after the publication of the tender, vehicles having date of registration up to the last date of bid submission which is 01.01.2024 as per the original tender document shall only be eligible for participation. The Respondent IOCL authorities have done so taking into account its necessity and being the authors of the document, the wisdom of the authorities in doing so, in the opinion of this Court ought not to be questioned or any perversity or malafide on the part of the Respondent Authorities, which however the Petitioners have failed to show in the instant writ petition. Under such circumstances, the question of interference with the said Clause does not arise.

11. This Court have also taken note of the circular dated 03.10.2023 which have been placed by the learned Senior counsel appearing on behalf of the Respondents which categorically mandates that the pre-qualification criteria once fixed, shall not be relaxed or changed up to the start of the bid submission date. It is also mentioned that in the specific cases where the pre-qualification criteria needs to be revised, subsequent to the start of the bid submission date, the tender shall be cancelled and a fresh tender has to be invited after approval of the revised tender document with the revised PQC. This Court having taken note of the said Clause as stated in the circular dated 03.10.2023 is of the opinion that the Petitioners have failed to make out a case for the purpose of interference with the pre-qualification criteria as mandated in Clause 14 of the tender schedule interfering with the said condition or issuing any directions to the Respondent Authorities to relax the said condition

would result in the entire tender process being made redundant which eventually would result in a fresh tender to be issued which would further result in delay in the entire tender process and consequently effecting the Respondents' business of transportation of the LPG cylinders in question. On this ground also, this Court finds no reason to interfere with the Clause 14 of the tender schedule.

12. Further to that, this Court also finds it very pertinent to mention that the Petitioners herein were not qualified as per the original tender document and even as on the last date of submission of the original tender documents. It also appears that as on today also the petitioners are not qualified in as much as it is only on 11.01.2024, the Petitioners have paid certain advances for the purpose of purchasing the vehicles in question. The documents which have been enclosed as Annexure-5, 5A, 5B and 5C however does not inspire the confidence of this Court. On this grounds also this Court is not inclined to interfere with the said Clause 14 at the behest of the Petitioners.

13. Accordingly, this Court does not find any merit in the instant writ petition for which the same stands dismissed.

14. Be that as it may, this Court however have not opined as regards the right of the authorities to consider the representation so submitted by the Petitioners and it shall be absolutely within the domain of the Respondent Authorities to consider, if deem fit, as per the prescription of law and the tender conditions.

JUDGE

Comparing Assistant