

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
O. O. C. J.

WRIT PETITION LD.NO.2139 OF 2004

M/s.Tiki Tar Industries. ...Petitioner.  
Vs.  
Bharat Petroleum Corporation Ltd. & Anr. ...Respondents.  
....

Mr. Rajgopal with Ms. Saumya Srikrishna i/b. Rekha Rajgopal for  
the Petitioner.  
Mr. M. P. Savla for Respondent No.1.  
Mr.V. M. Parshurami with Mr.Y. R. Mishra for Respondent No.2.  
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CORAM : DALVEER BHANDARI,C.J. &  
DR.D.Y.CHANDRACHUD, J.

July 30th, 2004.

P.C.:

In September 2003, the First Respondent invited tenders for the manufacture and supply of Bitumen Emulsion, Polymer Modified Bitumen and Crumb Rubber Modified Bitumen from manufacturers situated in Mumbai. The Petitioner submitted its bid in pursuance thereto. After the opening of Technical and Commercial Bids, the First Respondent by a communication dated

24<sup>th</sup> May 2004, informed the Petitioner that the tender had been cancelled. Subsequent thereto, in July 2004, three tenders have been floated. Whereas in the earlier tender, all three products were covered under one tendering process, in the subsequent enquiry, each tender covers a separate item.

2. In these proceedings under Article 226 of the Constitution, the Petitioner has impugned the cancellation of the earlier tender as well as the fresh notice inviting tenders, the letter on the ground that the tender conditions are unreasonable. There is no merit in the challenge to the decision to cancel the earlier tendering process. The authority inviting tenders is under no obligation to accept any tender and, for valid reasons, can legitimately cancel the process and invite fresh bids. The fresh tender conditions in the present case prescribe pre-qualifications (a) with respect to field level test task trials and (b) certain enhanced specifications. According to the Petitioner, these pre-qualifications are in the nature of field tests, which are normally carried out after the bituminous product is used and the tarred road

is laid. The Petitioner contends that it is neither practicable nor possible for the manufacturer to obtain the reports specified in the additional pre-qualification conditions which must necessarily only be post bid condition as the certification could be obtained only after the work is carried out. According to the Petitioner, there is one bidder who is able to meet these additional qualifications and the additional conditions have been floated with an intention to favour “a particular party”.

3. We are unable to accept the submission. The principles which govern the exercise of the power of judicial review in such cases have been enunciated by the Supreme Court in **Tata Cellular v. Union of India**, A. I. R. 1996 SC 11. In paragraph 113 of its judgment, the Supreme Court while elucidating those principles has inter alia held thus:

“The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to

accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.”

4. In the present case, the Petitioner seeks to challenge the terms of the first invitation to tender, something which is specifically proscribed by the Supreme Court. The terms of the invitation to tender have been held to be beyond judicial scrutiny since the invitation to tender is in the realm of contract. There is no compulsion upon the Petitioner to submit a bid. No fault can be found with the First Respondent for having decided that it is, in its interest to incorporate certain additional technical specifications. That is a decision for the First Respondent to take in the interest of the work which is required to be carried out. Though it has been alleged that only one party would meet the tender requirements and that the tender conditions have been designed to favour a particular party, the allegation is completely vague and is bereft the material particulars. The alleged party, who according to the

Petitioner, is sought to be favoured, is not named, nor indeed is it impleaded. There is only a bald allegation unsupported by material particulars. In these circumstances, we do not find any merit in the Petition. The Petition is accordingly rejected.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.