

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15<sup>TH</sup> DAY OF JUNE, 2016

PRESENT

**THE HON'BLE MR.SUBHRO KAMAL MUKHERJEE, CHIEF JUSTICE**

**AND**

**THE HON'BLE MR.JUSTICE RAVI MALIMATH**

WRIT APPEAL NO.278 OF 2016 (GM-RES)

BETWEEN

Indian Oil Corporation Limited,  
Karnataka State Office,  
No.29, P. Kalinga Rao Road,  
Bangalore – 560 027  
Represented by its  
Chief Divisional Consumer  
Sales Manager.

.. Appellant

(By Mr. Ashok Haranahalli, Senior Advocate  
for Mr. Subramanya R, Advocate)

AND

1. Karnataka State Road  
Transport Corporation,  
Central Offices,  
K.H. Road, Shanthinagar,  
Bangalore – 560 027.  
Represented by its  
Controller of stores  
And Purchases.
2. Bangalore Metropolitan  
Transport Corporation,  
Central Offices,  
K.H. Road, Shanthinagar,

Bangalore – 560 027.  
Represented by its  
Controller of Stores & Purchases.

3. North Western Karnataka Road Transport Corporation,  
Central Offices,  
Gokul Road, Hubli – 580 030.  
Represented by its  
Controller of Stores & Purchases.
4. North Eastern Karnataka Road Transport Corporation,  
Central Offices, 'Saarige Sadana',  
Main Road, Gulbarga – 585 102.  
Represented by its  
Controller of Stores & Purchases.
5. M/s. Bharat Petroleum Corporation Limited,  
Bangalore Territory (Industrial),  
"DIJ PARC TRINITY",  
No.17, 7<sup>th</sup> Floor, M.G. Road,  
Bangalore – 560 001.  
Represented by its  
Territory Manager.
6. State of Karnataka,  
Department of Finance,  
Public Works Finance Cell,  
Vidhana Soudha,  
Bangalore – 560 001.  
Represented by its  
Principal Secretary.

.. Respondents

(By Mr.P.D. Surana, Advocate for R-1;  
Mr. Udaya Holla, Senior Advocate for  
Mr. N.J. Kumar, Advocate for R-5;  
Miss Niloufer Akbar, AGA for R-6;  
Notice to R2 and R4 is complete;  
R3 is served and unrepresented)

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This Writ Appeal is filed under Section 4 of the Karnataka High Court Act, praying to set aside the order passed in the Writ Petition No.27719 of 2015 dated 05/01/2016.

This Writ Appeal coming on for Preliminary Hearing, this day, **the Chief Justice** delivered the following:

### **J U D G M E N T**

The Government Transport Corporations require to procure high speed diesel for running of the motor buses. There was an existing contract with Indian Oil Corporation Limited, which, although, expired some time in 2014, but, it was extended till June 30, 2015.

2. The Transport Corporations approached the Government for seeking exemption under Section 4(g) of the Karnataka Transparency in Public Procurements Act, 1999 (for short "the Act of 1999") and, on their representations, the State Government exempted them from the operation of the said Act of 1999. The net result is, they were not required to call for a tender.

3. Our attention is drawn to page.No.357 of the paper book, where it is recorded that the State Government exempted the Transport Department from the said Act of 1999 for purchasing high speed diesel required for the State Road Transport Corporations for a period of three years at a fixed rate from the government undertaking companies, that is, Indian Oil Corporation Limited, Bharat Petroleum Corporation Limited, Hindustan Petroleum Corporation Limited and Mangalore Refineries Private Limited.

4. Consequently, offers were sought for from those government oil companies and the offers were submitted by all the said four government oil companies.

5. On June 10, 2015, the Transport Department sent a letter to those four oil companies, asking them to submit sealed offers, quoting price for supply of diesel. The oil companies submitted their sealed covers on June 22, 2015, which were opened in the presence of the representatives of the oil companies.

6. While Indian Oil Corporation Limited offered a discount of ₹560/- per kilo litre, the Bharat Petroleum

Corporation Limited offered a discount of ₹850 kilo litre with credit facilities and other concessions.

7. The Central Purchase Committee of the Karnataka State Road Transport Corporation, in a meeting dated June 24, 2015, accepted the offer of the lowest offerer, that is, Bharat Petroleum Corporation Limited, as, admittedly, the offer of the Bharat Petroleum Corporation Limited was most competitive.

8. On June 25, 2015, a letter of intent was issued for supply of diesel to the Bharat Petroleum Corporation Limited, in terms of the offer made in the sealed tender.

9. The Bharat Petroleum Corporation Limited, as a token of gesture and as a special case, offered a revised discount of ₹1050/- per kilo litre with other concessions. We are informed that the offers were accepted and the supply has commenced and Bharat Petroleum Corporation Limited is supplying high speed diesel to those Transport Corporations.

10. Subsequent to the issue of the intent, on June 27, 2015, an offer was made by the Indian Oil Corporation Limited, offering to give discount of ₹1,100/- per kilo litre, by

revising their offer of ₹560/- per kilo litre.

As the contract was, already, entered into, between the Bharat Petroleum Corporation Limited and the Transport Corporations, the request of the Indian Oil Corporation Limited was not accepted.

11. Being aggrieved, the matter was taken up before this Court in the constitutional writ jurisdiction, by Indian Oil Corporation Limited.

12. By the impugned order dated June 5, 2016, this Court dismissed the writ petition, holding that the offer of the Bharat Petroleum Corporation Limited was most competitive and, therefore, it was rightly accepted by the transport corporations. Being aggrieved, the appeal is filed.

13. Mr. Ashok Haranahalli, learned senior advocate, moves the appeal. He submits that when the Transport Corporations were exempted from the operation of the said Act of 1999, they must procure high speed diesel from all the four government oil companies. He submits, further, that when the intention of the Transport Corporations is to obtain

more discounts, then, on June 27, 2015, when Indian Oil Corporation Limited offered discount of ₹1,100/- per kilo litre, the Transport Corporations ought to have accepted their offer.

14. We regret that we are unable to accept either of the contentions of Mr. Ashok Haranahalli. Our reading of the exemption order is, that liberty was granted to the Transport Corporations to procure high speed diesel from either of the oil companies subject to viability range and they were not required to float a tender as in the case of other government Corporations.

15. Secondly, as on the date of opening of the tender, most competitive price was that of the Bharat Petroleum Corporation Limited and, therefore, the Transport Corporations accepted their offer. The offer has become final.

16. Nevertheless, the Bharat Petroleum Corporation Limited has offered further discounts.

17. It was not open for the other Oil Companies to

come subsequently and urge that they would be offering further discounts. If their offers were to be accepted, then, there will be no finality of the contract.

18. Mr. Ashok Haranahalli cited two decisions of the Supreme Court of India.

As regards the case of **DUTTA ASSOCIATES PRIVATE LIMITED Versus INDO MERCHANTILES PRIVATE LIMITED** reported in **(1997) 1 Supreme Court Cases 53**, we are of the opinion that Dutta Associates Private Limited (supra) has no application in this case, as, in that case, after determining the 'viability range', the authorities called upon only the Dutta Associates private limited to make a counter offer to come within the 'viability range' and its revised offer at the higher limit of the 'viability range' was accepted.

Second decision that was referred to by Mr. Ashok Haranahalli is, **RELIANCE ENERGY LIMITED AND ANOTHER Versus MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LIMITED AND OTHERS** reported in **2007 A.I.R. SCW 6416**.



19. Our attention is drawn to the observation of the Supreme Court of India in the case of Reliance Energy Limited (supra), that once tenders are invited, the terms and conditions must indicate with legal certainty, norms and benchmarks. Therefore, the legal certainty is an important aspect of the rule of law.

20. The offer of Bharat Petroleum Corporation Limited and the offer of the Indian Oil Corporation Limited, on the date of opening the offers were final.

21. On the date of opening of the offers, the lowest and competitive offer was that of the Bharat Petroleum Corporation Limited. Therefore, that offer was accepted, intent was issued and, subsequently, Bharat Petroleum Corporation Limited offered revised discounts, enuring to the benefit of the Transport Corporations and Transport Corporations accepted the offer.

22. We are not inclined to interfere with the order impugned.

The writ appeal is, therefore, dismissed.

We make no order as to costs.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**

BMV\*

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