

High Court of Sikkim

Record of proceedings

**WP(C) No.37 of 2018**

M/s. Kripa Indane and Others

**Petitioner (s)**

*VERSUS*

The Chief Secretary and Others

**Respondent (s)**

**Date : 30-08-2018**

CORAM :

**THE HON'BLE ACTING CHIEF JUSTICE  
MRS. JUSTICE MEENAKSHI MADAN RAI**

**For Petitioner (s)**

Mr. A. Moulik, Senior Advocate.  
Ms. K. D. Bhutia, Advocate.  
Mr. Manish Kr. Jain, Advocate.  
Mr. Ranjit Prasad, Advocate.  
Ms. Archana Sharma, Advocate.

**For Respondent (s)**

**R-1, R-2 & R-7**

Mr. J. B. Pradhan, Additional Advocate General.  
Mr. Thinlay Dorjee Bhutia, Government Advocate.  
Mrs. Pollin Rai, Assistant Government Advocate.

**R-3**

None.

**R-4, R-5 & R-6**

None.

**R-8, R-9 & R-10**

Mr. Sudesh Joshi, Advocate.

**ORDER**

Heard.

Issue Notice upon the Respondents.

Mrs. Pollin Rai, Learned Assistant Government Advocate assisting the Learned Additional Advocate General accepts Notice on behalf of Respondent No.1, 2 and 7 and waives formal Notice.

Mr. Sudesh Joshi, Advocate accepts Notice on behalf of Respondents No.8, 9 and 10 and waives formal Notice.

Requisites be filed within three days.

## High Court of Sikkim

### Record of proceedings

Heard on I.A. No.01 of 2018, which is a Petition seeking the following reliefs, viz.;

- (i) To restrain the Respondents No.4, 5 and 6 and each of them, their subordinates, etc., from giving effect to the process of tender floated vide Notice Inviting E-Tender dated 03-07-2018 (Annexure - P1) until final disposal of the Writ Petition;
- (ii) Respondents No.2 and 3 from giving any effect to the letter dated 05-07-2018 (Annexure - P6) and letter dated 07-08-2018 (Annexure - P11) until final disposal of the Writ Petition.
- (iii) Any other relief or reliefs as this Hon'ble Court may deem fit and proper in the interest of justice.

To gauge the reason for the aforesaid prayers it is essential to delve into the factual background as enumerated in the Writ Petition which is briefly reflected herein. The Petitioners are local distributors of Liquid Petroleum Gas (LPG), appointed by the Respondents No.4, 5 and 6 and are owners of trucks. The Petitioners deliver LPG Cylinders to consumers after transporters, i.e., Respondents No.8, 9 and 10 deliver the same to the Petitioners godowns.

In this backdrop, vide its letter dated 05-03-2018 (Annexure - P2) addressed to the Secretary, Transport Department, the Respondent No.6 informed him that the prevailing contracts for transport with the Respondents No.8 to 10 was expiring on 31-08-2018. The Respondent No.6 sought a clarification *inter alia* that for transportation of LPG Cylinders they invite tenders at rates estimated by them, following the norms of the Sikkim Government where only Government nominated parties can take

High Court of Sikkim

Record of proceedings

part and enquiring whether any other party besides the Respondents No.8 to 10 have been nominated for carrying LPG in Sikkim. Also, whether distributors in Sikkim are authorized to participate in carrying LPG Cylinders if they follow all norms of the Sikkim Government. The letter mentioned that all over the country distributors get priority in allotment of LPG transportation, since the trucks remain under the direct control of the distributors thereby ensuring smooth supply of the essential commodity of LPG refills to general public. In response thereof the Transport Department on 10-05-2018 (Annexure – P5) issued a letter to the Respondent No.6 communicating *inter alia* that;

“ .....

..... the Transport Department (SNT) Division permits all local LPG distributors to participate in tender process of transportation of the LPG cylinders within the State of Sikkim. The IOCL should as per Sikkim Government norm allow only local distributors/transporters. No outside (sic) the State distributors/transporters shall be permitted.

.....”

In the teeth of the permission granted vide this letter, on 05-07-2018, another letter was issued by the self-same Department withdrawing the earlier letter dated 10-05-2018 granting “NOC” for the reason that the State Government through the Transport Department had entered into an contract of fifteen years commencing from 01-01-2014 with the Respondents No.8 to 10 who were stated to be paying royalty to the Government of Sikkim and hence the State Government would not entertain and allow the request of any other parties to carry LPG in the State during the subsistence of the agreement.

Following this communication, on 07-07-2018 the Petitioners herein filed a representation before the Respondent

High Court of Sikkim

Record of proceedings

No.2 requesting him to look into the matter in a positive manner. Thereafter receiving no response, legal notice came to be issued by the Petitioners to all the Respondents on 20-07-2018.

Meanwhile, the Commissioner-cum-Secretary, Department of Food, Civil Supplies & Consumer Affairs, Government of Sikkim, Respondent No.7, by his letter dated 03-08-2018, addressed to the Respondent No.5, while referring to the Respondent's correspondence dated 09-07-2018 communicated to him that;

“ .....

- a) In view of the present agreement, the existing transporters may participate in respect of the tender for transportation of refilled LPG cylinders from Raninagar, Jalpaiguri to Depot at Bagheykhola, Sikkim.
- b) As regards the transportation within Sikkim, in addition to the existing transporters, local LPG Distributors may also be allowed to participate in the present tender for transportation of LPG Cylinders from Bagheykhola to their respective godowns and from there to the registered address of the consumers.

.....”

It was emphasized therein that the proposal of the Respondent No.7 has been approved by the Government and therefore the decision of the State Government may be complied with in the tender process for LPG transportation.

Over and above this communication, Mr. S. B. S. Bhadauria, Respondent No.3, the Principal Secretary, Transport Department, issued a letter dated 07-08-2018 to the Respondent No.5 informing therein that no other Department under the

High Court of Sikkim

Record of proceedings

Government of Sikkim except the Transport Department is authorized to issue “No Objection Certificate” in connection with the carriage of LPG and Cylinders in the State of Sikkim. His communication *inter alia* reads as follows;

“ .....

As the Government of Sikkim, has already entered into long term registered agreement in 1998 with some Agencies/Transports firm, for carriage of the LPG & Cylinders for consumption in the State of Sikkim. The Transport Department will not entertain any No Objection Certificates, issued by other Departments under Government of Sikkim. “AS THIS WOULD LEAD TO BREACH OF CONTRACT/AGREEMENT”.

As such, No any Departments (sic), other than the Transport Department under Government of Sikkim, is authorized to issue No Objection Certificate, in connection to carriage of L.P.G. & Cylinder, in the State of Sikkim.

Thus, the Transport Department, Government of Sikkim, will not issue any permits to ferry or transport any products of L.P.G. & Cylinders in the State of Sikkim, against the No Objection Certificates, issued by any other Departments, if any?

The following parties are only authorized to carry LPG in the State of Sikkim.

- 1. M/s. Om Prakash Goyal
- 2. M/s. Liladhar Goyal & Bros.
- 3. M/s. Hill Top Carriers

.....”

The Respondent No.5 was advised by the Respondent No.3 to finalise the transport contract against their Tender No.RCC/ERO/37/2018-19/PT-62 with the Respondents No.8, 9 and 10.

Advancing his contentions, Learned Senior Counsel for the Petitioner would point out that the contract between the Respondents No.8 to 10 and the Transport Department is not in

## High Court of Sikkim

Record of proceedings

the know of any of the Petitioners either in 1998 or when it was renewed in 2013 effective from 01-01-2014. That State largesse cannot be distributed in the method adopted by the Transport Department by violation of law. The Respondents No.8 to 10 have been afforded monopoly over transportation of LPG and Cylinders while no law envisages such monopoly. That the terms of the contract entered into between the Transport Department and the Respondents No.8 to 10 are not only unreasonable but is against the interest of the general public, whilst also causing loss to the State exchequer and inconvenience to the general public since essential commodity is involved. Hence, the prayers in the I.A. be granted.

Learned Additional Advocate General conceded that the role of the Transport Department in entering into contract between the Respondents No.8 to 10 and the letter dated 07-08-2018 stating that no other Department other than the Transport Department under the Government of Sikkim is authorized to issue No Objection Certificate in connection with the carriage of LPG and Cylinder in the State of Sikkim, requires to be examined in view of the Motor Vehicles Act, 1988 and the Sikkim Motor Vehicles Rules, 1991. He would further submit that the Petitioners are free to participate in the tender floated by the Respondents No.4, 5 and 6. However, in view of the facts and circumstances indicated hereinabove the bids ought not to be opened till the disposal of the Writ Petition to prevent multiplicity of litigation.

Learned Counsel appearing for the Respondents No.8 to 10 *per contra* would vehemently contend that in the first instance no cause of action arises to the Petitioners for filing the Writ Petition since the Respondents No.4, 5 and 6 have not debarred the Petitioners from participating in the tender floated. That the

High Court of Sikkim

Record of proceedings

Writ Petition is also premature since the question of issuance or non-issuance of permission by the Transport Department would arise only and if the Petitioners were successful in the bid. No such circumstance obtains as on date and hence the Writ Petition deserves dismissal as also the I.A.

The parties present were heard at length. Pleadings and Documents perused.

It is apposite at this stage to refer to the communication dated 05-03-2018 issued by the Respondent No.6 to the Secretary Transport, Yatayat Bhawan, Government of Sikkim, which reads *inter alia* as follows;

“ .....

We are in the process of finalization of estimate for the tender for transportation of packed LPG cylinder throughout Sikkim. The present contracts are expiring on 31.08.18.

As you are aware, the transportation of POL products of IOCL is being done through SNT and the rate notification TI/T dated 01.05.2017 in this regard is attached for reference. However, for LPG cylinder transportation, we invite Tenders at rates estimated by us, following norm of Sikkim government where only government nominated parties (presently three parties) can take part.

.....

a) If any more parties (other than three nominated parties) have been nominated for carrying LPG in Sikkim.

.....”

In the light of what is extracted hereinabove, it is evident that only the Respondents No.8, 9 and 10 being Government nominated parties are eligible to participate in the tender process.

In the backdrop of the facts and circumstances placed before this Court and on perusal of the documents relied on by

## High Court of Sikkim

### Record of proceedings

the Petitioners, they have made out a case for grant of ad interim ex parte stay against the Respondents No.4 to 6. It is accordingly ordered as follows;

- (i) The Respondents No.4 to 6 shall allow the Petitioners to participate in the Tender.
- (ii) The Petitioners herein are free to participate in the said tender bid.
- (iii) Consequently the last date for submission of tender bid is extended to 14-09-2018 as against 31-08-2018 fixed, to enable the Petitioners to take necessary steps.
- (iv) The tender bid shall not be opened till final disposal of the instant stay petition, i.e., I.A. No.01 of 2018 in WP(C) No. 37 of 2018.
- (v) Since the existing contract of the Respondents No.8, 9 and 10 with the Respondents No.5 and 6 is up to 31-08-2018, the said Respondents shall continue transporting LPG and Cylinders till further orders of this Court.

List on 25-09-2018, as found convenient by the parties, for show cause/return .

**Acting Chief Justice**  
30-08-2018

Index : ~~Yes~~/No

Internet : Yes/~~No~~

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