

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

M.C.(W.A.) No. 178 of 2022

[Ref.: W.A. No. 39 of 2018]

1. AMPPTA, represented by its Secretary Wahengbam Somokanta Singh, aged about 52 years, S/o (L) W. Nipamacha Singh, r/o Keishamthong Top Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin No. 795001.
2. Shri Ahongsangbam Tamphayai Singh, aged about 58 years, s/o (L) A. Amuba Singh, a resident of Khurai Nandeibam Leikai, P.O. Lamlong, P.S. Porompat, Imphal East District, Manipur.

....Applicants

Versus

1. The Indian Oil Corporation Ltd., through its Chairman, Indian Oil Corporation Ltd. Ali Yavar Jung Marg, Bandra (East), Mumbai India – 400 051.
2. The Deputy General Manager, IOC, Retail cum State Level Co-ordination, Manipur.
3. The Deputy General Manager, IOC(OPS), Noonmati, Guwahati – 20.

.... Respondents

W.A. No. 39 of 2018

1. The Indian Oil Corporation Ltd., through its Chairman, Indian Oil Corporation Ltd. Ali Yavar Jung Marg, Bandra (East), Mumbai India – 400 051.
2. The Deputy General Manager, IOC, Retail cum State Level Co-ordination, Manipur.
3. The Deputy General Manager, IOC(OPS), Noonmati, Guwahati – 20.

.... Appellants

Versus

1. AMPPTA, represented by its President, Shri Hijam Tikendra Singh, aged about 65 years, s/o H. Nilamani Singh, a resident of Kakwa Bazar, P.O. & P.S. Singjamei, Imphal West District, Manipur.

2. Shri Ahongsangbam Tamphayai Singh, aged about 58 years, s/o (L) A. Amuba Singh, a resident of Khurai Nandeibam Leikai, P.O. Lamlong, P.S. Porompat, Imphal East District, Manipur.

..... Respondents

B E F O R E

**HON'BLE MR. JUSTICE M.V. MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the applicants	:	Mr. H.S. Paonam, Senior Advocate assisted by Mr. S. Gunabanta, Advocate
For the respondents	:	Mr. L. Shashibhushan, Senior Advocate assisted by Mr. K. Kamei, Advocate
	:	Mr. S. Nepolean, Government Advocate.
Date of hearing	:	11.10.2023
Date of judgment & order	:	30.10.2023

**O R D E R
(CAV)**

[A. Guneshwar Sharma, J]

[1] Heard Mr. H.S. Paonam, learned senior counsel assisted by Mr. S. Gunabanta, advocate appearing for the applicants, Mr. L. Shashibhushan, learned senior counsel assisted by Mr. K. Kamei, advocate appearing for the Indian Oil Corporation Ltd. and Mr. S. Nepolean, learned Government Advocate appearing for the State respondent.

[2] The present application has been filed by the applicants/writ petitioners under Section 151 of Cr.P.C. for closing the W.A. No. 39 of 2018.

[3] The applicants/writ petitioners filed W.P.(C) No. 882 of 2017 challenging the validity and correctness of the NIT dated 10.11.2027 issued

by the Deputy General Manager, IOC (OPS), Guwahati, Indian Oil Corporation inviting tenders "for Road Transportation of Bulk Petroleum Products White Oil".

[4] The writ petitioner association is a registered society under the Manipur Societies Registration Act, 1989. The association was formed in the year 1981-82 by the transporters of POL products and its members are the owners of the Tank Trucks/Oil Tankers (hereinafter referred to as "the TTs") who have been rendering their services for bridging input in respect of Petrol, Kerosene and Diesel oil in the State of Manipur from other States through NH-2 and NH-37. Keeping in mind the circumstances obtaining in the State of Manipur, the IOC Ltd. used to issue NIT for the State of Manipur only in respect of TTs with a carrying capacity of 12 KL for a total of 534 TTs with the condition that the bidders will have to offer minimum three TTs, out of which one should be owned by him/it.

[5] Deviating from the earlier practice and procedure, the NIT dated 10.12.2017 was issued by the General Manager, IOC (OPS), Guwahati inviting tenders "for Road Transportation of Bulk Petroleum Products – White Oil" for three locations, namely (i) Tinsukia / Digboi Terminal, (ii) Dimapur Depot and (iii) Malom Depot, Imphal. As per the scope of work, the NIT invited tenders in respect of 11 to 12 KL for 247 TTs as compared to earlier tender for 534 TTs and 18 KL and above up to 40 KL for 336 TTs with the aim and object to oust or negate the service of the State TT owners and to attract/please the outside POL businessman only.

[6] Being aggrieved by the said NIT, the writ petition has been filed on the ground that :

- (a) The NIT was issued with a view to oust the members of the petitioners association who have rendered their services despite they being exposed to various threats, frequent landslides and meeting illegal road taxes imposed by various

underground organizations. However, they have been rendered ineligible to compete with the outsiders in the tenders, as many of them do not own two TTs registered in their names.

- (b) The rate fixed by the IOC Ltd. in the NIT is unreasonable, as the same had been fixed at a rate lower than the one fixed in the year 2013-14 completely ignoring the escalation of price/cost with respect to maintenance of vehicle; salary of the driver/handyman and essential items.
- (c) In the NIT, the security deposit was increased to Rs. 5,00,000/- from Rs. 3,00,000/- although the rate quotation was decreased from that of the previous year within an average range between 12% and 14% without considering the increasing cost factor due to GST.
- (d) The bidders will have to offer minimum three TTs, out of which two will be owned by him/it deviating from the earlier eligibility criteria whereby the bidders will have to offer minimum three TTs, out of which he/it will own at least TT. The members of the petitioners association have been rendered incapacitated as most of them do have only TT registered in their names. In order to make eligible, the members of the petitioners association are required to purchase at least one more TT costing about 20 to 25 lakhs in a short period of time.
- (e) The Retail Outlet Dealers (hereinafter referred to as "the ROs") under EOI (Expression of Interest) performance clause as reflected at Page No. 5 of 98 of the NIT is also quite offensive to the petitioners association as the NIT allowed the ROs to participate in the tender as on date. There are about 101 TTs under EOI and allowing them to participate in the NIT amounts to granting double benefits/chances to them and a number of 110 TTs belonging to the General Transporters will have to remain idle or wasted without their being utilized. This amounts

to unequal treatment meted out to the members of the petitioners association.

- (f) The NIT invited tenders from TT owners having a capacity of 21 to 40KL for 334 Oil Tankers but since none of the local transporters own such vehicle as the registration thereof is not possible in Manipur, the offer is un-favourable to the transporters from the State of Manipur. The TTs having capacity of 24KL and 29KL were introduced only during February, 2017 to June, 2017 by way of gateway notice. The introduction of 21 KL to 40 KL in the NIT with different rates, for the first time in the State of Manipur, affects the level playing field.
- (g) Deviations in the NIT, from that of the earlier one, have been made without taking into consideration the situation prevailing in the State but with the aid and advice of the Assam based Transporter Association. The IOC Ltd. has completely overlooked the sacrificial services rendered by the members of the petitioners association during natural as well as manmade crisis when there is scarcity of petrol in the State of Manipur.

[7] Another writ petition being W.P.(C) No. 933 of 2017 has been filed by 3 (three) writ petitioners for setting aside the NIT dated 10.11.2017 issued by the Deputy General Manager, IOC(OPS), Guwahati, Indian Oil Corporation for tender "for Road Transportation of Bulk Petroleum – White Oil".

[8] Another writ petition being W.P.(C) No. 545 of 2018 has been filed by the writ petitioner for quashing and setting aside the e-mail dated 12.06.2018 under the subject "Offer for acceptance of L1 rate" when the NIT under Tender ID : 2017-NEISO-64145-1 is pending for finalization.

[9] Vide common judgment and order dated 25.08.2018, three writ petitions being W.P.(C) No. 882 of 2017, W.P.(C) No. 933 of 2017 and W.P.(C) No. 545 of 2018 are allowed and consequently, the NIT dated 10.11.2017 and the e-mail dated 12.06.2018 are quashed and set aside with no order as to costs. However, it is open to the IOD Ltd. to float a new NIT keeping in mind the observations made in the common judgment and order.

[10] Being aggrieved by the judgment and order dated 25.08.2018, the IOC preferred 3 (three) writ appeals being W.A. No. 38 of 2018 against W.P.(C) No. 933 of 2017; W.A. No. 39 of 2018 against W.P.(C) No 882 of 2017 and W.A. No. 40 of 2018 against W.P.(C) No. 545 of 2017.

[11] During the pendency of the writ appeals, no interim order was passed by this Court. It is stated that without obtaining any leave from this Court, another NIT being Tender No. RCC/ERO/37/2021-22/PT-216, E-tender ID 2022 ERO 148215 dated 02.03.2022 whereby many new conditions have been introduced in great deviation of from the earlier NIT even to the extent of reducing number of TTs in respect of 11-12 KL to 121 which was originally 534 in 2017 NIT to 212 in the fresh NIT mentioned above.

[12] The IOC appellant herein issued an order on 14.03.2022 notifying about the cancellation of the tender published on 10.11.2017 which was the subject matter of the writ petitions under appeal in the above referred writ appeals. The cancellation order was uploaded in their website knowing fully about the prevailing circumstances.

[13] The writ appeal filed by the appellant is for quashing and setting aside of the impugned judgment and order of the learned Single Judge in its interference of the NIT of 2017 by quashing and setting aside and thus, if the appeal is decided in favour of the appellant, the NIT of 2017 dated 10.11.2017 would stand revived and in the event appeals are decided

against the appellant, applicant writ petitioner will get the benefit of the judgment and order passed by the learned Single Judge impugned in the present writ appeal and consequently, IOC would be legally obligated to issue a fresh NIT in accordance with the observation made by the learned Single Judge. However, by cancellation of the 2017 NIT on their own, the cause of the writ petition as well as writ appeals has no longer survived and virtually it has become infructuous. Further, insisting on continuing the writ appeal would be only academic consideration as well as from getting away from the omission and commission in issuing the new NIT of 02.03.2022 in breach of the observation made by the learned Single Judge which would not be legally permissible in the present facts and circumstances obtaining as on today.

[14] It is submitted that as held by the Hon'ble Supreme Court in the case of **"Shipping Corporation of India Ltd. vs. Machado Brothers and Ors."** Which is gainfully quoted below as under :

"Thus, it is clear that by subsequent even if the original proceeding has become infructuous, ex-debito justitiae, it will be the duty of the Court to take such action as is necessary in the interest of justice, which includes disposing of infructuous litigation. For the said purpose, it will be open to the parties to make application under Section 151 CPC to bring to the notice of the Court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the Court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not."

Therefore, the above referred writ appeal may be disposed of as infructuous having regard to the subsequent event of issuance of the cancellation of NIT of 2017 by the IOC which is the subject matter of the original writ petition. Cancellation of the NIT of 2017 by the IOC is reproduced herein below:

India Oil Corporation eProcurement Portal	
Published Corrigendum Details	
Date : 14-Mar-2022 06:01 AM	
Organisation Chain :	IndianOil II Marketting II North East Integrated State Office II Operations

Tender ID :		2017_NEISO_64145_1				
Tender Ref. No. :		IO AOD SO/OPS/POL/PT-8 of 2017				
Tender Title :		Road Transportation of bulk POL product				
Corrigendum Type :		Cancellation of Tender				
Corrigendum Document Details						
Corr. No.	Corrigendum Title	Corrigendum Description	Corrigendum Reason	Published Date	Document Name	DOC Size (in KB)
1.	Cancellation of Tender	Reason for cancellation of tender as per corrigendum attached	Due to administrative reason/issues	10-Mar-2022 05:19 PM	Corrigendumfor Cancellationof tender:pdf	388.92

[15] It may be noteworthy to being on record about the various action and order issued by the IOC Ltd. for circumventing the order of this Court including undue favour to RO Dealers in the name of induction of TT for the transportation of POL products by wholly ignoring the hard fact that it is the member of the applicant association who has been continuously shouldering the responsibility of transportation of POL product in the State since the very beginning facing unfriendly environment and great life threatening obstacles and as on today also there has not been any complaint against the service of the member of the applicant. The IOC while ignoring the case of the General Transporters have selectively taken up the case of RO who are in possession of TT lying without utilization for transportation of POL to Malom Depot in the name of induction. The proposal and recommendation reflects consideration on the part of IOC for those RO dealers who are in possession of TT and difficulty in discharging their EMI and Insurance premium annually which is a favoritism and discrimination shown to the general transporters who are members of the applicant/writ petitioner who are also facing the same problem and issue. Applicant for convenience and appreciation beg to reproduce the portion of the proposal made on 09.08.2022 and approval accorded in principle on 16.08.2022 as under:

"Proposal:

It is proposed that in-principle approval be accorded for induction of dealer owned TTs into operations for taking supplies ex. Malom Depot (7D17)."

Therefore, applicant submitted that IOC writ appellant by their own action goes to show that they will resort to any activities without limit for imposing their condition on the general transporters irrespective of the order passed from the ends of this Court which is wholly against the constitutional edifice of this country hence, passing of an appropriate order is highly called for so that unbridle power exercise by IOC is restrained.

[16] Insisting on continuous induction to TTs of RO dealers for utilizing of POL at Malom Depot from outside in addition to original intent of EOI relying on provision/clause in the NIT, it would be best on the part of IOC to do away with the floating of NIT for general transporter so that they will be free to utilize the TTs of ROs wherever and whenever situation demands as they claim without any apprehension of litigation in the Court.

[17] The IOC filed replies to the counter affidavit stating that with regard to the statements made in paragraph No. 4 and 5 of the application/Misc. Case, the deponent states that the appellants / IOCL has already issued letters/Corrigenda on 11.12.2023 and 13.02.2023 for withdrawal of the EOI dated 09.04.2021 and General Tender dated 02.03.2022 as well as for revocation of earlier order dated 10.03.2022 whereby the NIT dated 10.11.2017 was cancelled/withdrawn. Thus, after the aforesaid exercise undertaken by the IOCL, the writ petitions being W.P.(C) No. 195 of 2022 and 495 of 2021 filed by the applicants against the newly issued POL product transportation EOI and tender became infructuous and were disposed of by this Court as such vide order dated 13.02.2023. Corrigenda dated 11.02.2023 (Annexure – R1 & R2) and letter dated 13.02.2023 (Annexure – R3) are reproduced herein below:

"Annexure R – 1**Corrigendum : Cancellation of Tender**

<i>Tender Reference Number :</i>	RCC/ERO/37/2021-22/PT-216
<i>Tender ID :</i>	2022_ERO_148215_1
<i>Tender Title :</i>	Road Transportation of Bulk Petroleum Products by Top Loading Tank Trucks – MS/HSD/SKO/Branded Fuels Ex-Imphal Depot.

This is to inform all concerned that based on the detailed reasoning cum supervening factors and consequent to the management approval, the following tender(s) / communications issued by IOCL stands cancelled and withdrawn with immediate effect.

Tender Reference Number: RCC/ERO/37/2021-22/PT-216 with E-Tender ID: 2022_ERO_148215_1 published by RCC, ERO for Road Transportation of Bulk Petroleum Products by Top Loading Tank Trucks – MS/HSD/SKO/Branded Fuels Ex-Imphal Depot.

As a result of the cancellation of the aforesaid tender, any/all communication(s)/order(s) issued and exchanged with bidder(s) in this behalf stand withdrawn.

Order dated 24.11.2022 from Hon'ble High Court at Manipur at attached herewith.

*Tender Inviting Authority
RCC, ERO"*

"Annexure – R2**Corrigendum : Cancellation of Expression of Interest (EOI)**

<i>Tender Reference Number :</i>	IOAODSO/OPS/EOI/PT-17/IMPHAL
<i>Tender ID :</i>	ID 2021_NEISO_134117_1
<i>Tender Title :</i>	EOI for Imphal Depot

This is to inform all concerned that based on the detailed reasoning cum supervening factors and consequent to the management approval, the following tender(s)/communication(s)/EOIs issued by IOCL stands cancelled and withdrawn with immediate effect.

EOI No. 90AODSO/OPS/EOI/PT-17/IMPHAL with Tender ID 2021_NEISO_134117_1 floated by IOAOD SO/Ops for Road Transportation of Bulk Petroleum products ex-Imphal Depot.

As a result of the cancellation of the aforesaid Tender(s)/EOI, any/all communication(s)/order(s) issued and exchanged with bidder(s) in this behalf stand withdrawn.

Honable Manipur High Court dated 24.11.2022 is attached herewith.

*Tender Inviting Authority
CGM(Ops)/IOAOD SO"*

"Annexure – R3

To Whomsoever it may concern

This is to inform that the communication dated 10.03.2022 (Attached), issued in connection with Tender ref. No. IOAODSO/OPS/POL/T-8 of 2017 under Tender ID: 2017_NEISO_64145 for the Road Transportation of Bulk Petroleum Products ex-Imphal Depot, stands withdrawn with immediate effect.

Accordingly, the withdrawal of the referred tender is revoked and the tender No. IOAODSO/OPS/POL/T-8 of 2017 stands re-instated.

Further communication in this regard shall be issued contingent upon the outcome of the pending Writ Appeal nos. 38, 39 and 40 of 2018, pending before the Hon'ble High Court of Manipur and other connected matters.

*Tender Inviting Authority
Sd/-
DGM(Ops) IOAOD SO"*

[18] The applicant filed rejoinder to the counter affidavit of the IOC stating that with reference to para No. 6 of the affidavit-in-opposition under reply, deponent submits that the moment the EOI dated 09.04.2021 and General Tender dated 02.03.2022 were floated after the disposal of W.P.(C) No. 882 of 2017 & Ors., the writ appeal has become infructuous even though the legality of the fresh tender are subjected to judicial review. It may be pertinent to mention here that this Court had quashed and set aside the impugned NIT dated 10.11.2017 in W.P.(C) No. 882 of 2017 with further direction to float the NIT afresh by keeping in mind the observation made in the judgment and order. Mr. HS Paonam, learned senior counsel submits that after floating of the fresh tender, the respondents shall be deemed to have been complied with the judgment and order passed in W.P.(C) No. 882 of 2017 from their part. Now, the respondents cannot turn back the clock by canceling the fresh NIT and re-instating the NIT dated 10.11.2017 which has been quashed by this Court. Further, the NIT dated 10.11.2017 was

cancelled by the appellants/respondents on the ground that the tender has exceeded the validity date of 240 days without the leave of this Court on 11.03.2022. Therefore, there is no reasonable ground for revoking the 10.02.2022 whereby the NIT dated 10.11.2017 was cancelled and the appellants/respondents in the Misc. Case cannot re-instate the NIT dated 10.11.2017 legally as the same has been quashed and set aside by this Court in W.P.(C) No. 882 of 2017 & Ors. The respondents upon failure to complete the fresh tender process due to litigation cannot turn back after more than 1 year subsequent to the floating of fresh tender to claim that they have cancelled it and re-instate the earlier NIT dated 10.11.2017 to adjudicate the matter. Since the aforesaid fresh tender was issued after the judgment and order passed in W.P.(C) No. 882 of 2017 and cancellation of NIT dated 10.11.2017, the respondents have waived their right to challenge the judgment and order dated 25.08.2018 passed in W.P.(C) No. 882 of 2017 & Ors. Re-instating NIT dated 10.11.2017 amounts to flogging dead horse as the same has been quashed and set aside by this Court in W.P.(C) No. 882 of 2017 and a fresh NIT was floated. It is also stated that litigations cannot be fought on trial and error basis. Respondents are accountable for their action and they cannot change their stand one after another to suit their interest. Such action of the respondents has made the legal proceedings before this Court a mockery in the eyes of the general public.

Further, it is submitted that the letter/notice dated 13.02.2023 which re-instates the Tender No. IO AOD So/OPS/POL/PT-8 of 2017 dated 10.11.2017 directly amount to challenging the judgment and order passed in W.P.(C) No. 882 of 2017 and as such, this Court may intimate suo moto Contempt proceedings against the respondents for willful and deliberate disobedience of the judgment and order dated 25.08.2018 passed in W.P.(C) No. 882 of 2017 & Ors.

[19] With reference to para no. 7 of the affidavit-in-opposition under reply, deponent submits that statement of the respondents that the previous tender of 2017 stands revived for all intents and purposes is contemptuous.

The respondents have tried to justify holding of fresh tender by stating that the earlier tender of 2017 has been cancelled on the ground that the tender has exceeded the validity date of 240 days. Therefore, when the respondents failed to prevent passing of interim order staying the fresh tender, the respondent cannot alter their stand and state that the EOI dated 09.04.2021 and General Tender dated 02.03.2022 is cancelled and NIT dated 10.11.2017 is re-instated for all intents and purposes. Respondents cannot be allowed to keep on changing their stand. The appellants/respondents ought to have considered this legal aspect of the appeal becoming infructuous upon floating of fresh tender and cancellation of the NIT of 2017 before taking those decisions. It is stated that the appellants upon floating the fresh tender and cancelling the earlier NIT of 2017 are estopped from re-instating the NIT of 2017. Before floating the NIT afresh and before cancelling the NIT of 2017, the appellants/respondents ought to have taken leave of this Court since the appeal is pending. However, by doing so, the respondents have waived their right to challenge the validity of the impugned judgment and order passed in W.P.(C) No. 882 of 2017. Such act of the respondents for reviving the NIT of 2017 is also barred by the principle of estoppels and doctrine of promissory estoppel.

[20] We have gone through the materials on record and considered the rival submissions made at bar. After floating fresh NIT by cancelling the impugned NIT of 2017, the cause in the writ petitions as well as writ appeals has not survived anymore. The NIT of 2017 is no longer in existence after its cancellation by IOC and floating new NIT in its place. Reviving the NIT of 2017 which was quashed by learned Single Judge and cancelled by IOC itself during pendency of the appeals, will be on the threshold of contempt of court. Accordingly, the application is allowed and writ appeal being WA No. 39 of 2018 is closed.

[21] Since the applicant has filed only one application for closing of WA No. 39 of 2018, registry is directed to list remaining writ appeals being

WA Nos. of 38 of 2018 and 40 of 2018 on 21.11.2023 for further proceedings.

JUDGE

JUDGE

KH.
JOSHUA
MARING

Digitally signed
by KH. JOSHUA
MARING
Date: 2023.10.31
14:16:27 +05'30'