

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Friday, the Fifth day of July Two Thousand Nineteen

PRESENT

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.M.P.Nos.16249, 16252, 16541, 17040, 17410, 17621

and 17629 of 2019

in W.P.Nos.16614, 16619, 16976, 17562, 18013, 18261

and 18269 of 2019

M/S.SRI BALASUBRAMANIAN [PETITIONER IN WMP.16249/19
AGENCIES, REP. BY ITS PARTNER, IN WP.16614/2019]
G.VIJAYAN, SREE LAKSHMI NILAYAM,
NO.19, 5TH STREET, GANDHI NAGAR,
THIRUVANNAMALAI - 606 603.

G.SOBHA KUMARI [PETITIONER IN WMP.16252/19
PROPRIETRIX, SAKTHI TRANSPORT, IN WP.16619/2019]
SREE LAKSHMI NILAYAM,
NO.19, 5TH STREET, GANDHI NAGAR,
THIRUVANNAMALAI - 606 603.

M/S.V.R.P.TRANSPORTS [PETITIONER IN WMP.16541/19
REP. BY ITS MANAGING PARTNER, IN WP.16976/2019]
P.SUNDARARAJAN NO.7/26, VANAKKARAMPUDHU,
NAVNI THOTTAKKARAPATTI POST,
NAMAKKAL TALUK AND DISTRICT.

A.MANI [PETITIONER IN WMP.17040/19
PROPRIETOR, IN WP.17562/2019]
A.M.P. TRANSPORT SERVICE,
NO.2/98, J.J.NAGAR,
MUKUNTHARAYAPURAM POST,
WALAJA, VELLORE - 632 405.

1 D.D.TRANSPORT [PETITIONERS IN WMP.17410/19
REP. BY ITS PROPRIETOR, IN WP.18013/2019]
DAYANITHI, NO.5C/8, MEENAMBAL SALAI,
KANNADASAN NAGAR, CHENNAI-118.

2 D.UMAPATHIE
PROPRIETOR OF S.V.TRANSPORT
MANAGING DIRECTOR SUNRISE TRANSPORT,
NO.5C/8, MEENAMBAL SALAI,
KANNADASAN NAGAR, CHENNAI-118.

SRI SARAVANA TRANSPORT,
REP. BY ITS PROPRIETOR,
M.THIIYAGARAHAN,
NO.22, RAJIV GANDHI NAGAR,
WALLAJA PET, VELLORE DISTRICT.

[PETITIONER IN WMP.17621/19
IN WP.18261/2019]

SRI KARTHIK TRANSPORT
REP.BY ITS PARTNER,
K.VENKATESAN,
NO.4/26, KAKKANJI STREET,
M.A.NAGAR, PADIYANALLUR,
RED HILLS, CHENNAI - 600 052.

[PETITIONER IN WMP.17629/19
IN WP.18269/2019]

Vs

1 THE GENERAL MANAGER -
(CONTRACTS),,
INDIAN OIL CORPORATION LIMITED
(MD), INDIAN OIL BHAVAN,
139,NUNGAMBAKKAM HIGH ROAD,
CHENNAI - 600 034.

[RESPONDENTS IN WMP.16249/19]
IN WP.16614/2019]

2 THE DEPUTY GENERAL MANAGER-
(CONTRACTS), INDIAN OIL CORPORATION LIMITED
(MD), INDIAN OIL BHAVAN, 139, NUNGAMBAKKAM
HIGH ROAD, CHENNAI - 600 034.

1 THE GENERAL MANAGER -
(CONTRACTS),,
INDIAN OIL CORPORATION LIMITED
(MD), INDIAN OIL BHAVAN,
139,NUNGAMBAKKAM HIGH ROAD,
CHENNAI - 600 034.

[RESPONDENTS IN WMP.16252/19]
IN WP.16619/2019]

2 THE DEPUTY GENERAL MANAGER-
(CONTRACTS), INDIAN OIL CORPORATION LIMITED
(MD), INDIAN OIL BHAVAN, 139, NUNGAMBAKKAM
HIGH ROAD, CHENNAI - 600 034.

1 M/S.INDIAN OIL CORPORATION
LTD., REP BY ITS GENERAL MANAGER
-CONTRACTS), INDIAN OIL BHAVAN,
139,NUNGAMBAKKAM HIGH ROAD,
CHENNAI - 600 034.

[RESPONDENTS IN WMP.16541/19]
IN WP.16976/2019]

2 THE REGIONAL TRANSPORT OFFICER,
ELECTRONICS CITY REGION,
ELECTRONICS CITY, BTM 4 STAGE,
2ND BLOCK, NEW TO KEB SUB - STATION
BANGALURU - 560 076.

3 A.NITHYA,

1 THE CHAIRMAN [RESPONDENTS IN WMP.17040/19]
INDIAN OIL CORPORATION, IN WP.17562/2019]
G-9, ALI YAVAR JUNG MARG,
BANDRA (EAST), MUMBAI - 400 051.

2 GENERAL MANAGER - (CONTRACTS)
INDIAN OIL CORPORATION LIMITED (MD),
INDIAN OIL BHAVAN,
139, NUNGAMBAKAM HIGH ROAD, CHENNAI - 600 034.

3 THE DEPUTY GENERAL MANAGER
- (CONTRACTS),
INDIAN OIL CORPORATION LIMITED (MD),
INDIAN OIL BHAVAN,
139, NUNGAMBAKAM HIGH ROAD, CHENNAI - 600 034.

4 THE COMMISSIONER,
TRANSPORT DEPARTMENT, 1ST FLOOR,
A BLOCK, TTMC BUILDING,
SHANTI NAGAR, BANGALORE,
STATE OF KARNATAKA-560 027.

5 THE REGIONAL TRANSPORT OFFICER,
ELECTRONIC CITY, BANGALORE,
STATE OF KARNATAKA

1 INDIAN OIL CORPORATION [RESPONDENTS IN WMP.17410/19
(MARKETING DIVISION), in WP.18013/2019]
SOUTHERN REGION, INDIAN OIL BHAVAN,
NO.139, UTHAMAR GANDHI SALAI, CHENNAI-34

2 L.GOPINATHAN
DGM (CONTRACTS),
INDIAN OIL CORPORATION LTD, (MD).
(INDIAN OIL BHAVAN),
NO.139, NUNGAMBAKKAM HIGH ROAD, CHENNAI-34.

1 THE SECRETARY TO GOVERNMENT OF INDIA,, [RESPONDENTS IN WMP.17621/19
MINISTRY OF PETROLEUM AND NATURAL GAS, IN WP.18261/2019]
SHASTRI BHAVAN, NEW DELHI - 110 001.

2 THE CHAIRMAN,
INDIAN OIL CORPORATION LIMITED,
INDIAN OIL BHAVAN,
G-9, ALI YAVAR JUNG MARG,
BANDRA (EAST), MUMBAI - 400 051.

3 THE GENERAL MANAGER,
MARKETING DIVISION,
INDIAN OIL CORPORATION LIMITED,
139, NUNGAMBAKKAM HIGH ROAD, CHENNAI - 600 034.

4 GOPINATHAN .L
DEPUTY GENERAL MANAGER,
TENDER INVITING AUTHORITY,
INDIAN OIL CORPORATION LIMITED,
139, NUNGAMBAKKAM HIGH ROAD, CHENNAI - 600 034.

5 THE REGIONAL TRANSPORT OFFICER,,
ELECTRONIC CITY, BENGALURU, KARNATAKA.

6 M.SENTHILKUMAR

7 A.NITHYA,

8 BALU TRANSPORT,
44, CHELLAPPAN ILLAM,
S.K.GARDEN NETHIMEDU, SALEM - 636 002.

9 ARASAN TRANSPORT,
2/208, 4TH STREET,
PERUMAL KOVIL MEDU,
SEELANAICKENPATTY P.O., SALEM - 636 201.

10 K.MAHESWARI,

R-11 ANDAVAR ROAD LINES
30/169, THURAIYUR MAIN ROAD,
OPP. POLICE STATION, NAMAKKAL 6377 001.

12 SRI ANJANEYA TRANSPORT
2/210, ACT NAGAR, ANIYAPURAM, NAMAKKAL -637 017

13 NCS ROAD LINES
OPP. MURUGAN KOVIL,
1A, MAYAMPILLAIYAR KOVIL ROAD,
NAMAKKAL - 637 001.

14 G.N.TRANSPORT,
2/210, ACT NAGAR, ANIYAPURAM, NAMAKKAL-637 017.

1 THE SECRETARY TO GOVERNMENT OF INDIA,, [RESPONDENTS IN WMP.17629/19
MINISTRY OF PETROLEUM AND NATURAL GAS, IN WP.18269/2019]
SHASTRI BHAVAN, NEW DELHI -110 001.

2 THE CHAIRMAN
INDIAN OIL CORPORATION LIMITED,
INDIAN OIL BHAVAN,
G-9, ALI YAVAR JUNG MARG,
BANDRA (EAST), MUMBAI - 400 051.

3 THE GENERAL MANAGER,
MARKETING DIVISION,
INDIAN OIL CORPORATION LIMITED,
139, NUNGAMBAKKAM HIGH ROAD, CHENNAI - 600 034.

4 GOPINATHAN.L
DEPUTY GENERAL MANAGER,
TENDER INVITING AUTHORITY,
INDIAN OIL CORPORATION LIMITED,
139, NUNGAMBAKKAM HIGH ROAD, CHENNAI - 600 034.

5 PALISATTY SRINIVASA RAO,

Petitions praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to

(1) direct the 1st and 2nd respondents Tender Inviting Authority, not to issue Work orders followed by Letter of Indent to any other Bidders, (in WMP.16249/2019);

(2) direct the 1st and 2nd respondents Tender Inviting Authority, not to issue Work orders followed by Letter of Indent to any other Bidders, (in WMP.16252/2019);

(3) To grant an order of stay of operation of the Tender Bid in Tender No. SRCC / PT /134 / LBP /2018 -19, on the file of the 1st respondent, by withholding issuance of any Letter of Intent to the successful bidders and execution of agreement with them, (in WMP.16541/2019);

(4) To direct the respondents 2 and 3 Tender Inviting Authority not to issue work order followed by Letter of Indent to any other Bidders, (in WMP.17040/2019);

(5) To Issue an interim injunction restraining the respondents from confirming the LOI issued in favour of the 3rd parties (in WMP.17410/2019);

(6) To grant an order of stay of operation of the Tender Bid in Tender No. SRCC/ PT/ 134/ LBP/ 2018-19, on the file of the 3rd respondent, by withholding issuance of any letter of Intent to the successful bidders and execution of agreement with them, (in WMP.17621/19 in WP.18261/2019) and

(7) To grant an order of stay of operation of the Tender Bid in Tender No. SRCC/ PT/ 134/ LBP/ 2018-19, on the file of the 3rd respondent, by withholding issuance of any letter of Intent to the successful bidders and execution of agreement with them, (in WMP.17629/19 in WP.18269/2019) respectively pending WP.Nos.16614, 16619, 16976, 17562, 18013, 18261 and 18269 of 2019.

Order :These petitions coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.C.JOHNSON, Advocate for the petitioner in WMP.16249,16252/19 in WP.16614, 16619/2019 and of MR.V.AYYADURAI SENIOR COUNSEL for MR.S.SENTHIL Advocate for the petitioner in WMP.16541/19 in WP.16976/2019 and of MR.N.G.R.PRASAD SENIOR COUNSEL for M/S.C.JOHNSON, Advocate for the petitioner in WMP.17040/19 in WP.17562/19, and of M/S.D.BHARTHY Advocate for the petitioner in WMP.17410/19 in WP.18013/2019 and of MR.AR.L.SUNDARESAN SENIOR COUNSEL for MR.R.KANNAN Advocate for the petitioner in WMP.17621 & 17629/19 in WP.18261 & 18269/2019 and of MR.M.S.KRISHNAN SENIOR COUNSEL for MR.MOHAMED FAYAZ ALI Advocate on behalf of the Respondents 1 & 2 & 2 & 3 & 2 to 4 in each of the petitions and of MR.G.ARULMURUGAN Advocate for the 3rd respondent in WMP.16541/2019 and of MR.K.GANGADHARAN CGSC for the 1st respondent in WMP.17621 & 17629/19 in WP.18261 & 18269/2019 the court made the following order:-

Heard Mr. V. Ayyadurai, Learned Senior Counsel, Mr. AR.L. Sundaresan, Learned Senior Counsel, Mr. N.G.R. Prasad, Learned Counsel, Mr. C. Johnson, Learned Counsel, Mr. S. Senthil, Learned Counsel, Mr. R. Kannan, Learned Counsel M/s. D. Bharathy, Learned Counsel appearing for the Petitioner, Mr. M.S. Krishnan, Learned Senior Counsel assisted by Mr. Mohammed Fayaz Ali, Learned Standing Counsel for the Respondents/Indian Oil Corporation, Mr. K. Gangadharan, Learned Central Government Standing Counsel appearing for the Respondents/Government of India and Mr. G. Arul Murugan, Learned Counsel for the Respondent.

2. Indian Oil Corporation Limited had invited e-tenders for bulk lube transportation from LBP, Chennai to direct customers (Pan India) and stock transfer to other IOCL locations through tank trucks by tender No. SRCC/PT/134/LBP/2018-19 dated 01.02.2019. As per terms of the notice inviting e-tender, the last date and time for submitting e-tender documents on-line was 11.00 hours on 26.02.2019, which would mean that vehicles of the participants which had been registered till that time were eligible to be considered for selection in that tender. However, Indian Oil Corporation had extended the last date and time for submission of e-tenders by subsequent corrigenda dated 13.02.2019, 15.02.2019 and 20.02.2019 on account of which the last date fixed for submission of completed e-tender documents on-line eventually came to be extended till 11.00 a.m. on 14.03.2019. It requires to be stated

here that in clause (xxiii) of the terms and conditions of evaluation of tenders, it has been mentioned that in case original rates quoted by more than one party are same and the number of tank trucks offered is more than requirement, the latest model of tank trucks will get preference and the allotment will be made accordingly.

3. It is case of the Petitioners that though they had quoted the honest rate, they were unsuccessful in the tender due to some of their tank trucks losing preference on account of having been manufactured as older model. In that regard, it is complained that 61 out of 98 successful bidders had their respective tank trucks registered after 26.02.2019, i.e., from 27.02.2019 to 14.03.2019. In particular, it is sought to be portrayed that the said vehicles which were registered during that period could not have been transported from the place of manufacture to the Office of the Registering Authority within a short span in complete condition for registration and the matter requires to be probed in detail in that regard. It is even alleged that a group of tenderers have conspired together with the officials of Indian Oil Corporation to manipulate the records in such a way so as to confirm the conditions stipulated in the tender and get selected, which was an unfair advantage disrupting the level playing field for all the tenderers to have equal right of participation. In that factual backdrop, the Writ Petitions have been filed challenging the evaluation of bids made on 15.03.2019 and 27.05.2019 pursuant to the aforesaid tender and for consequential direction. As an interim relief till the disposal of the Writ Petitions, an order of stay of operation of the tender is sought by withholding letter of any intent to the successful bidders and execution of agreement with them has been sought.

4. Learned Senior Counsel appearing for Indian Oil Corporation submitted that the entire tender process was by way of transparent procedure which enabled all participants to make their bid and nothing had prevented the Petitioners if they had the latest model of the tank trucks to include the same in the tender. It is pointed out that in any event, the requirement of giving preference to the latest model is definitely in public interest as such vehicles would certainly be in much more fit condition than older vehicles and the self-serving grievance of the Petitioner in this regard, cannot be countenanced.

5. Amongst the Respondents, Indian Oil Corporation has entered appearance before this Court at the time of admission but in order to have a effectual and complete adjudication of the matter, it is necessary that the Registering Authorities of the motor vehicles and the successful bidders are made as parties to the proceedings. It is seen from the pleadings that in some of the cases, the Registering Authorities and all the successful bidders have not yet been made as parties and the respective Petitioners would have to take necessary steps in that regard. It is only after all the necessary parties are before the Court and are given due opportunity to file their pleadings with supporting documents, the

contentions raised in the Writ Petitions could be taken up for consideration by this Court.

6. The question that now remains for consideration is whether the Petitioners are entitled to any interim relief of restraining Indian Oil Corporation from proceeding further for awarding the contract to the successful bidders by execution of documents and carrying out the operations till the disposal of the Writ Petitions.

7. The materials placed on record by the parties so far show that a substantial number of 61 out of 98 successful bidders were persons whose vehicles have been registered from 27.02.2019 to 14.03.2019. At the same time, it does not appear to serve any useful purpose to withhold the issuance of any letter of intent to those successful bidders and restrain the execution of agreement with them inasmuch as it would be against public interest to delay commencement of the contract. However, the interests of the Petitioners who may turn out to be successful allottees in the event of the Writ Petitions being decided in their favour must also be adequately protected. Bearing in mind the aforesaid relevant factors, it would be expedient that the 61 successful bidders whose tank trucks were registered from 27.02.2019 to 14.03.2019 should be required to execute a letter of undertaking to Indian Oil Corporation agreeing that payments due to them under the contract in pursuance of the impugned tender would be released on condition that they would refund those amounts to the extent that may be determined by this Court when the Writ Petitions are ultimately disposed. The particulars of the 61 tank trucks registered from 27.02.2019 to 14.03.2019 as provided by the Learned Counsel for the Respondents shall form part of this order. It is made clear that if Indian Oil Corporation fails to obtain such undertaking but releases payments to the successful bidders, the liability to compensate for the amount shall be on Indian Oil Corporation for the same.

10. Accordingly, Miscellaneous Petitions bearing W.M.P. Nos.16249, 16252, 16541, 17040, 17410, 17621 and 17629 of 2019 are ordered on the aforesaid terms.

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-sd/-
05/07/2019

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE GENERAL MANAGER -
(CONTRACTS),, INDIAN OIL CORPORATION LIMITED
(MD), INDIAN OIL BHAVAN, 139, NUNGAMBAKKAM
HIGH ROAD, CHENNAI - 600 034.

2 THE DEPUTY GENERAL MANAGER-
(CONTRACTS), INDIAN OIL CORPORATION LIMITED
(MD), INDIAN OIL BHAVAN, 139, NUNGAMBAKKAM
HIGH ROAD, CHENNAI - 600 034.

3 THE REGIONAL TRANSPORT OFFICER,
ELECTRONICS CITY REGION,
ELECTRONICS CITY, BTM 4 STAGE,
2ND BLOCK, NEW TO KEB SUB - STATION
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4 THE CHAIRMAN
INDIAN OIL CORPORATION,
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5 THE COMMISSIONER,
TRANSPORT DEPARTMENT, 1ST FLOOR,
A BLOCK, TTMC BUILDING,
SHANTI NAGAR, BANGALORE,
STATE OF KARNATAKA-560 027.

6 INDIAN OIL CORPORATION
(MARKETING DIVISION),
SOUTHERN REGION, INDIAN OIL BHAVAN,
NO.139, UTHAMAR GANDHI SALAI, CHENNAI-34

7 THE SECRETARY TO GOVERNMENT OF INDIA,,
MINISTRY OF PETROLEUM AND NATURAL GAS,
SHASTRI BHAVAN, NEW DELHI - 110 001.

+3 C.C. to M/S.C.JOHNSON Advocate SR.Nos.8466 to 8468

C.C. to M/S.G.ARULMURUGAN Advocate SR.NO. 8458

+2C.C. to MR.R.KANNAN Advocate SR.NO. 8457

C.C. to MR.MOHAMMED FIYAZ ALI Advocate SR.NO. 8478

Order

in

W.M.P.Nos.16249, 16252, 16541, 17040, 17410, 17621

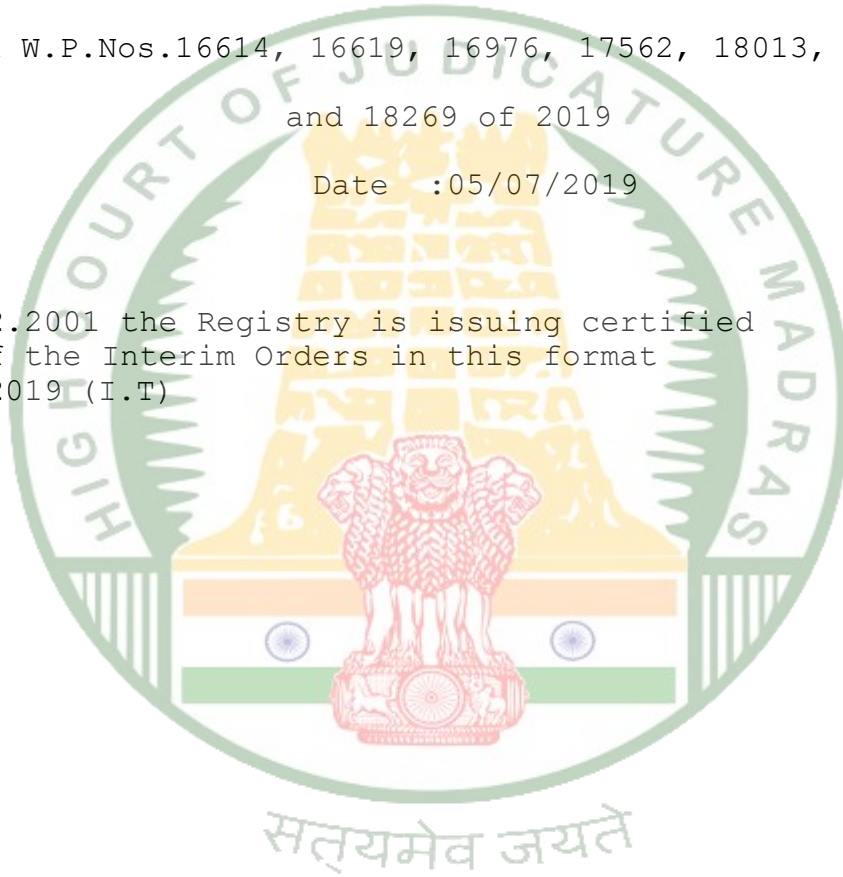
and 17629 of 2019

in W.P.Nos.16614, 16619, 16976, 17562, 18013, 18261

and 18269 of 2019

Date :05/07/2019

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
VS 08.07.2019 (I.T)



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