

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.NOS.2314 OF 2019
AND
C.M.P.NOS.15241 AND 15243 OF 2019

A.Mani

.. Appellant

-Vs-

1. The Chairman,
Indian Oil Corporation Ltd.,
G-9, Ali Yaver Jung Marg
Bandra (East), Mumbai - 400 051.
2. The General Manager- (Contracts)
Indian Oil Corporation Limited (MD)
Indian Oil Bhavan,
139, Nungambakkam High Road
Chennai - 600 034.
3. The Deputy General Manager-(Contracts),
Indian Oil Corporation Limited (MD),
Indian Oil Bhavan,
139, Nungambakkam High Road
Chennai - 600 034.
4. The Commissioner,
Transport Department,
1st Floor, A Block, TMC Building,
Shanti Nagar, Bangalore,
State of Karnataka 560 027.
5. The Regional Transport Officer,
Electronic City, Bengaluru,
State of Karnataka.

... Respondents

Prayer :

Writ Appeal under Clause 15 of the Letters Patent, against
the order passed by this Honourable Court in WMP.No.17040 of
2019 in W.P.No.17562 of 2019.

WMP.No.17040 of 2019:-

To direct the Respondents 2 & 3 Tender Inviting Authority not to issue work order followed by letter of Indent to any other Bidders.

W.P.No.17562 of 2019:-

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or Order in the nature of Writ of Certiorari filed mandamus calling for the records on the file of the respondents 2 and 3 herein relating contract for Bulk Lube Transportation from Lube Blending Plant (LBP), Chennai to direct customers and stock transfer to other IOCL Locations (Mainly Tadepalli/Khapri/Slivassa/Taloja/Trombay/Vashi) through Tank Trucks, Tender ID.2019-SROTN-91320-1 and quash the order of rejection in letter dated 10.06.2019, passed against the petitioner giving reason NIT FULFILLED and direct the respondents 2 and 3 to release Letter of Indent favouring the petitioner consequent to clearance of Technical and financial Bid.

For Appellant : Ms.V.Vanitha

For RR1 to 3 : Mr.Mohammed Fayaz Ali

JUDGMENT

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

Both the learned counsel appearing for the parties submitted that the present case is covered by the decision of this court in W.A.Nos.2300, 2238 and 2240 of 2019 dated 18.7.2019 wherein this court has held as under:-

"The appellants in the present intra Court appeals are aggrieved against the interim order of the learned Single Judge dated 05.07.2019 passed in a batch of writ petitions in stay application in W.M.P.Nos.16249, 16252, 17040, 17410, 17621 and 17629 of 2019 in W.P.Nos.16614, 16619, 16976, 17562, 18013, 18261 and 18269 of 2019 (M/s.Sri Balasubramaniam Agencies and Others -Vs- Indian Oil Corporation and Others).

2. The learned Single Judge has passed the following interlocutory order in the writ petitions filed challenging the tender process floated by the respondent Indian Oil Corporation, for Transportation of Bulk Lube Base Oil.

"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 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."

3. Learned counsels have urged before us that the respondent Indian Oil Corporation Limited (hereinafter referred to as 'IOCL') deliberately changed the last date of tender from 27.02.2019 to 14.03.2019, to accommodate some other persons and it was found that 61 out of 98 successful bidders in that process, were those who brought new Trucks / Tankers and got them registered between the interregnum period of 27.02.2019 to 14.03.2019, whereas the present appellants were left out, who had purchased their trucks for participating in the said tender process before 27.02.2019. This exercise, according to the appellants, was undertaken by the respondent IOCL in a malafide manner and therefore, the tender process deserves to be interfered with by the learned Single Judge, as well as this Court in the present appeals.

4. Upon issuance of the notice, the respondent IOCL has entered appearance and drawn our attention to the representations filed by two associations viz., Indian Oil Lube Bulk Transport Owner's Welfare Association and Chennai Petroleum Tankers Lorry Owner Association dated 04.02.2019 and 06.02.2019 respectively, wherein they requested the respondent IOCL to extend the tender closing date for a further period after 26.02.2019 and they also requested for change of specifications of the trucks / tankers to undertake such transportation work. In view of these representations only, the respondent IOCL considered to appropriate the last date of tender from 26.02.2019 to 14.03.2019. Learned counsel for the appellants, however, submitted that the present appellants are not members of the said associations.

5. Having heard the learned counsel for the parties, we are satisfied that no interference is called for in the interlocutory order passed by the learned Single Judge. The respondent IOCL cannot be faulted in extending the last date of tender on the representation of the Associations. Even otherwise, they had that discretion to do so, if considered appropriate by them. The award of the contract cannot be compelled, in such matters, to

consider the tenders only submitted before the date earlier fixed by IOCL, which is a public sector undertaking. The extension of date cannot be said to be per se arbitrary or malafide, as is sought to be made out, solely because the appellants / petitioners might have lost the chance to participate or the owners who purchased such trucks later on in the extended period can get a preference, they cannot lay a valid challenge to the same. It is settled legal position that the interference of the Courts in tender processes has to be very minimal, and only in cases of established act of arbitrariness of State, or its instrumentalities.

6. Since the writ petitions are still pending, we are not inclined to express any opinion on the merits of the case, lest it affects the pendency of the writ petitions before the learned Single Judge, in any manner. Further, we are of the clear opinion that no interference is required in the interlocutory order passed by the learned Single Judge. The appeals are devoid of any merit and the same are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed."

2. Accordingly, the present Appeal is disposed of in the same terms. No costs. The connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

ssk.

To

1. The Chairman,
Indian Oil Corporation Ltd.,
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5. The Regional Transport Officer,
Electronic City, Bengaluru, Karnataka.

+1cc to Mr.J.Chelladurai, Advocate, S.R.No.62819

+1cc to Mr.Mohammed Fayaz Ali, Advocate, S.R.No.63089

W.A.Nos.2314 of 2019

KS (CO)
CS/11/11/2019



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