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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2019

CORAM

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

W.A.Nos.2300, 2238 and 2240 of 2019
and C.M.P.No.15189, 15190, 14862, 14864,
14880 and 14881 of 2019

W.A.No.2300 of 2019

Sri Saravana Transport
represented by its Proprietor
M.Thiyagarajan, No.22, Rajiv Gandhi Nagar
Wallajapet,
Vellore District.

... Appellant

-Vs-

- 1.The Secretary to Government of India
Ministry of Petroleum & Natural Gas
Shastri Bhavan, New Delhi - 110 001.
- 2.The Chairman, Indian Oil Corporation Ltd
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.Mr.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.Senthil Kumar
7. A.Nithya
8. Balu Transport, No.44, Chellappan Illam
SK Garden, Nethimedu, Salem 636 002.



9. Arasan Transport, 2/208, 4th Street
Perumal Kovil Medu, Seelanaickenpatty PO
Salem - 636 201.

10. K. Maheswari

11. Andavar Road Lines, 30/169, Thuraiyur Main Road
Opp Police Station
Namakkal 637 001.

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. GN Transport, 2/210, ACT Nagar
Aniyapuram,
Namakkal-637 017.

... Respondents

For Appellants	:	Mr. Mohan for Mr. Kannan R.
For Respondents	:	Mr. M. S. Krishnan, Senior Counsel for M/s. Mohammed Fayaz Ali - for R1 to R4

Prayer : Writ Appeal under Clause 15 of the Letters Patent,
against the order dated 05.07.2019 passed by this Honourable
Court in W.M.P. No.17621 of 2019 in W.P.No.18261 of 2019.

Prayer in W.M.P.Nos.17621 of 2019 in W.P.No.18261 of 2019:-

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.

Prayer in W.P.No.18261 of 2019:-

To issue a Writ of Certiorari mandamus calling for the
records of the 3rd respondent in Tender No. SRCC/ PT/ 134/ LBP/
2018-19 quash the same and Technical and Finance bids which
were evaluated on 15.03.2019 and 27.05.2019 respectively in
respect of the respondents 6 to 14 and consequently directing
the 3rd respondent corporation to re-evaluate the Technical and
Finance Bid with respect to Tender No. SRC/ PT/ 134/ LBP/ 2018-19.

W.A.No.2238 of 2019

M/s. Balasubramaniam Agencies
rep. by its Partner Mr. G. Vijayan
Sree Lakshmi Nilayam, No.19, 5th Street
Gandhi Nagar, Chennai - 600 034.

... Appellant



-Vs-

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. ... Respondents

For Appellants : Mr.Mohan for Mr.Kannan R.

For Respondents: Mr.M.S.Krishnan, Senior Counsel
for M/s.Mohammed Fayaz Ali
- for R1 & R2

Prayer :Writ Appeal under Clause 15 of the Letters Patent,
against the order dated 05.07.2019 passed by this Honourable
Court in W.MP No.16249 of 2019 in W.P.No.16614 of 2019.

Prayer in WMP No.16249 of 2019:-

To direct the 1st and 2nd respondents Tender Inviting
Authority, not to issue Work orders followed by Letter of Indent
to any other Bidders.

Prayer in W.P.No.16614 of 2019:-

Writ petition filed under Article 226 of the Constitution of
India, praying that in the circumstances stated therein, and in
the affidavits filed therewith, calling for the records on the
file of the 1st and 2nd respondents herein relating contract for
Bulk Lube Transportation 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 with reference to Tender No. SRCC/PT/ 134/
LBP/ 2018-2019 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 1st
and 2nd respondents to release Letter of Indent favouring the
petitioner consequent to clearance of Technical and financial
Bid.

W.A.No.2240 of 2019

G.Sobha Kumari, Proprietrix
Sakthi Transport, Sree Lakshmi Nilayam
No.19, 5th Street, Gandhi Nagar,
Thiruvannamalai-606 603

... Appellant



-Vs-

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.

... Respondents

For Appellants : Mr.AR.L.Sundaresan, Senior Counsel
for M/s.J.Chelladurai Caldwell

For Respondents: Mr.M.S.Krishnan, Senior Counsel
for M/s.Mohammed Fayaz Ali -
for R1 & R2

Prayer :Writ Appeal under Clause 15 of the Letters Patent,
against the order dated 05.07.2019 passed by this Honourable
Court in W.MP No.16252 of 2019 in W.P.No.16619 of 2019.

Prayer in WMP No.16252 of 2019:-

To direct the 1st and 2nd respondents Tender Inviting Authority
not to issue Work orders followed by Letter of Indent to any
other Bidders.

Prayer in W.P.No.16619 of 2019:-

Writ petition filed under Article 226 of the Constitution of
India, praying that in the circumstances stated therein, and in
the affidavits filed therewith, calling for the records on the
file of the 1st and 2nd respondents herein relating contract for
Bulk Lube Transportation 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 with reference to Tender No. SRCC/PT/ 134/
LBP/ 2018-2019 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 1st
and 2nd respondents to release Letter of Indent favouring the
petitioner consequent to clearance of Technical and financial
Bid.



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

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.

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



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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.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government of India
Ministry of Petroleum & Natural Gas
Shastri Bhavan, New Delhi - 110 001.
- 2.The Chairman, Indian Oil Corporation Ltd
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. The Regional Transport Officer, Electronic City
Bengaluru, Karnataka.
- 5.The General Manager (Contracts)
Indian Oil Corporation Limited (MD)
Indian Oil Bhavan, 139, Nungambakkam High Road
Chennai 600 034.



6.The Deputy General Manager - Contracts
Indian Oil Corporation Limited (MD)
Indian Oil Bhavan, 139, Nungambakkam High Road
Chennai 600 034.

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+1 cc to Mr.R.Kannan, Advocate, Sr.No. 61032
+1 cc to Mr.C.Johnson, Advocate, Sr.No. 61437
+1 cc to Mr.J.Chelladurai Caldwell, Advocate SR NO:61438
+2 cc to M/s.Mohammed Fayaz Ali, Advocate, Sr.No. 60931

W.A.Nos.2300, 2238
& 2240 of 2019

GJII(CO)
CSL/01.08.2019