



W.P. No.10405/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
05.04.2023	11.04.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NO.10405 OF 2023
AND
W.M.P. NOS.10355 TO 10357 OF 2023**

1. B.Charumathy
2. J.Gandhimathi

.. Petitioners

- Vs -

1. M/s.Indian Oil Corporation Ltd.
Rep. by its Chief General Manager (LPG-S&D)
Indian Oil Bhavan
139, Nungambakkam High Road
Chennai 600 034.

2. M/s.Bharat Petroleum Corporation Ltd.
Rep. by its Territory Manager (LPG)
No.1, Ranganathan Garden
Off 11th Main Road
Anna Nagar, Chennai 600 040.

3. Hindustan Petroleum Corporation Ltd.
Rep. by its Dy. General Manager-LPG Region
Petro Bhavan, 3rd Floor, No.82, TTK Road
Alwarpet, Chennai 600 018.

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records pertaining to impugned notice of extension LPG/BULK/TT/IOC/2018-23/CONSENT-EXTN dated 11.02.2023 issued by the 1st respondent and ground the same directing the respondents to issue fresh “Upcoming Bulk LPG Transportation Tender 2023”.

For Petitioners : Mr. Vineet Subramanian, SC
For Mr. V.Pavel

For Respondents : Mr. AR.L.Sundaresan, ASG
Assisted by Mr. V.Anantha Natarajan

ORDER

By consent of the learned counsel appearing on either side, this writ petition itself is taken up for final disposal at the stage of admission.

2. Mr. V.Anantha Natarajan, learned standing counsel takes notice for respondents 1 to 3.



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3. The petition in W.M.P. No.10355 of 2023 filed to permit the petitioners to file a single writ petition is ordered on payment of separate Court fees within a period of two weeks from the date of this order, failing which the order in the present petition would enure only to the benefit of the 1st petitioner.

4. The petition in W.M.P. No.10356 of 2023 filed to dispense with the original impugned notice is ordered as prayed for.

5. By the present petition, the petitioners assail the impugned notice in and by which the existing Bulk LPG transportation is sought to be extended by a further period of two years with a condition that it will be initially for a period of one year with two further extensions, if required and consent is sought for from the transporters.

6. It is the case of the petitioner that based on the e-Tender invited by the respondents on 23.1.2018, which tender is for a period of five years from 1.9.2018 to 31.8.2023, pertaining to the southern region, the petitioner



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applied for the same under the quota of Stand Up India Scheme (for short 'SUIS') as the petitioner is a first generation entrepreneur. As per the conditions of the tender, the persons coming under SUIS, on being awarded the tender could be eligible only for providing 3 trucks as per Item IV Clause (ii) of the Notice Inviting Tender, while the other persons, who have been in the fray for long, on being awarded with the contract, would be entitled to provide trucks in the ratio of 1 : 1, viz., self owner and owned by others. Further the persons belonging to SC/ST could quote their bid only at the floor rate finalised, which is the lowest price and all other bidders can quote price at their discretion within the price band.

7. The petitioners, being the successful bidders under the SUIS have been supplying three trucks to the respondents. In such a backdrop, all the successful bidders, who were supplying trucks to the respondents were called for a discussion on 5.9.2022 to discuss about the upcoming tender for the year 2023. However, it is the averment of the petitioner that in the discussion, the respondents had proposed extension of the ongoing contract for a further period of two years. The petitioners and other persons, similarly placed,



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opposed the said proposal on the ground that the extension by another two years without issuing fresh tender would impinge on their right of equal participation in providing transportation as the petitioners are providing trucks only at L1 rates as they fall under the SUIS.

8. It is the further averment of the petitioners that if new tender is floated, the petitioners would be able to compete in open category which would enable them to provide more trucks at the price fixed at their discretion and that there would be no embargo on quoting rates as per the floor rates. The extension of the contract causes grave prejudice to persons who fall under the SUIS category and, thereby it infringes and violates the constitutional right to carry on the occupation/trade as it puts unreasonable conditions to the freedom guaranteed under Article 19 (1) (g) of the Constitution.

9. It is the further averment of the petitioner that non-issuance of fresh tender upon the coming to an end of the old tender denies opportunity to the petitioners to be treated as equals as it denies the petitioner to compete in



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open category and, thereby, violates the equality guaranteed under Article 14.

The respondents being public sector undertakings have to follow the constitutional mandate and the extension sought to be enforced by the respondents is a direct infringement on the right and opportunity of the petitioners to play in a level playing field.

10. It is the further averment of the petitioners that the issuance of new tender would make business more beneficial and that the trucks that would be put in service by the successful bidders would satisfy the BS IV norms, which would be more conducive to the environment. The extension sought to be given by the respondents have been premised on two reasons, firstly the issues faced by the transporters due to the COVID pandemic, the loan moratorium and increased operating cost and secondly the inability to assess the requirement of tank trucks due to commissioning of pipelines. It is the averment of the petitioner that the said reasons are insufficient to extend the tender period and it is being done only for the purpose of benefitting certain individuals.



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11. Pursuant to the aforesaid discussion, the respondents have gone on to issue the impugned notice, which violates the petitioners right to livelihood and, therefore, challenging the same, the present writ petition is filed.

12. Learned senior counsel appearing for the petitioners while highlighting all the aspects, which forms part of the affidavit filed in support of the petition, further submitted that the extension of two years beyond the period of tender not only works hardship to the petitioners, who are first generation entrepreneurs, but the tender conditions, which limits the usage of trucks belonging to them furthers the inequality beyond the initial period of tender. It is the further submission of the learned senior counsel that the petitioners, while permitted only usage of three trucks and that too on the floor rate prescribed by the respondents, which is not the case with other successful tenderers, who can quote rates as per their discretion. It is therefore the submission of the learned senior counsel that the act of the respondents in extending the tender by a further period of two years is nothing but an act of perpetuating the inequality between two types of successful bidders.



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13. It is the further submission of the learned senior counsel that if a fresh tender is called, the petitioners would stand divested of their cloak from SUIs and would be in a position to participate as a regular tenderer, where they would be in a position to quote the rates as per their discretion. However, they are precluded from doing so as fresh tender is not called and extension has been given for a period of two years, which is wholly perverse, arbitrary and unsustainable.

14. It is the further submission of the learned senior counsel that the reasons, which have been given for granting the extension for two years is wholly insufficient. Without sufficient and valid reasons, granting such extensions would be very much against the constitutional mandate of a level playing field and it would be an injustice, as it perpetrates inequality among the bidders. The said extension does not stand the test of reasonableness and, therefore, it is a clear violation of the guarantees provided to the citizens under Article 14 and 19 (1) (g) and, therefore, the impugned notice granting extension deserves to be set aside with an affirmative direction to the



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respondents to proceed with issuance of fresh tender. Accordingly, prayer is made for allowing the present petition.

15. In support of the aforesaid submission, learned senior counsel for the petitioners relied on the decision of the Supreme Court in ***Sterling Computers Ltd. – Vs – M & N Publications Ltd. & Ors. (1993 (1) SCC 445)***.

16. Per contra, learned Addl. Solicitor General appearing for the respondents submitted that it is within the scope of the Tender Inviting Authority to grant extension and the petitioner, being a successful bidder and who has enjoyed the fruits of the tender cannot now come before this Court to nullify the powers of the Tender Inviting Authority, when the notice inviting tender has clearly mandated that the power of the Tender Inviting Authority to modify the tender conditions.

17. It is the further submission of the learned Addl. Solicitor General that the reasons cited by the respondents for extending the period of tender,



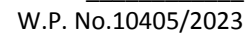
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that too uniformly across all the successful bidders, cannot be said to be in violation of equality.

18. It is the further submission of the learned Addl. Solicitor General that the contract period to be five years and Clause 1.9 of the terms and conditions prescribe that extension can be granted for a further period of six months or till a new tender is finalised, whichever is earlier. In this regard, it is the submission of the learned Addl. Solicitor General that the respondents, considering the representations made by the various successful bidders that much of the tender period got consumed in the COVID-19 situation, which resulted in the contractors not able to realise the business and pay the bank loans and are facing financial crisis.

19. It is the further submission of the learned Addl. Solicitor General that the respondents are shifting transportation of LPG through pipelines and are to reduce the transportation of LPG through trucks, which work is not yet completed, which would take between a year and two for completion. In such view of the matter, invoking clause 19 (1), the Tender Inviting Authority has



20. It is the further submission of the learned Addl. Solicitor General that pursuant to the meeting and discussion that took place on 5.9.2022 between the respondents and the transport contractors, as 95% of the contractors accepted for extending the terms and conditions by a further period of two to three years, a policy decision has been taken by the respondents to extend the period initially by a period of one year and thereafter, by two slots of six months, if required. In this backdrop, it is the submission of the learned Addl. Solicitor General that clause 19 (1) provides not only for extension by a period of six months alone, but it provides that the extension can be till a new tender is finalised, whichever is earlier. Therefore, the act of the respondents in extending the contract by a max of two years as aforesaid cannot be said to be unsustainable.

21. It is the further submission of the learned Addl. Solicitor General that merely because the petitioners could not provide more trucks and get



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higher transportation cannot be a ground to claim violation of Article 14, as the tender conditions remain intact for all the transport contractors. Further, the benefit, which the petitioners got at the first instance is as SUIs, which is continued even during the extended period, which is an equivalent treatment meted out to the petitioners. Further, the policy decision of the Management of the respondents to extend the period by a further period of two years on the same terms and conditions with escalation in respect of fuel price alone cannot be said to be bad and so long as the said condition fulfils the constitutional mandate under Articles 14 and 19 (1) (g), this Court would not intervene in the said conscious decision taken by the respondents.

22. It is the further submission of the learned Addl. Solicitor General that the decision to grant extension has been consciously arrived at by the respondents, which has resulted in the impugned notice being circulated among all the transport contractors, including the petitioners with option to the said transport contractors to give consent. If the transport contractors, including the petitioners are of the view that the extension is not beneficial to them, it is open to the transport contractors to opt out without giving the



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consent and the policy decision taken by the respondents cannot be said to be bad or in violation of the constitutional mandate.

23. It is the further submission of the learned Addl. Solicitor General that extension provided for in clause 1.9, though is for a period of six months, even assuming that the contract is awarded for a period of five years, still by mutual consent between the parties, the contract could be extended and no other contractor can have a grievance on this aspect. The petitioners also being treated alike by the respondents as all other contractors, cannot have any grievance with regard to the extension and if not inclined, the petitioners could very well not give their consent.

24. In support of the aforesaid submissions, learned Addl. Solicitor General placed reliance on the following decisions :-

- i) *Premium Granites &Anr. – Vs – State of Tamil Nadu &Ors. (1994 (2) SCC 691);*
- ii) *Silppi Constructions Contractors – Vs – Union of India &Anr. (2020 (16) SCC 489); and*
- iii) *Bharat Cooking Coal Ltd &Ors. – Vs – Amr Dev Prabha&Ors. (2020 (16) SCC 759)*



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25. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record as also the decisions relied on by the learned counsel on either side.

26. The exposition of law in the matters relating to tenders has been succinctly stated by the Supreme Court in *Bharat Cooking Coal case (supra)*, and it is trite to quote the same for easy reference :-

“28. The scope of judicial review in tenders has been explored in-depth in a catena of cases. It is settled that constitutional courts are concerned only with lawfulness of a decision, and not its soundness. Phrased differently, Courts ought not to sit in appeal over decisions of executive authorities or instrumentalities. Plausible decisions need not be overturned, and latitude ought to be granted to the State in exercise of executive power so that the constitutional separation of powers is not encroached upon. However, allegations of illegality, irrationality and procedural impropriety would be enough grounds for courts to assume jurisdiction and remedy such ills. This is especially true given our unique domestic circumstances,



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which have demonstrated the need for judicial intervention numerous times. Hence, it would only be the decision-making process which would be the subject of judicial enquiry, and not the end result (save as may be necessary to guide determination of the former).

29. This position of law has been succinctly summed up in Tata Cellular – Vs – Union of India (supra) where it was famously opined that:

“77. ... Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.”



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27. From the ratio laid down above, it is aptly clear that so long as the act does not suffer the vice of illegality or procedural impropriety or irrationality, the Courts should be very much circumspect in interfering with the said decision and the Courts should not sit in appeal over such decisions of the executive authorities or instrumentalities and that latitude ought to be granted in exercise of executive power.

28. With the aforesaid principles etched in the mind of this Court, a careful look at the facts in the present case reveal that there is no dispute with regard to the award of the contract, which was for a period of five years ending with 31.08.2023, which are not in dispute. Before the contract with the various transport contractors came to an end, the respondents had called for the discussions with the transport contractors with regard to extension of contract. In the discussion, while the petitioners and other similarly placed persons, who make up around 5% of the entire contractors, objected to the extension, 95% of the contractors accepted the offer of the respondents for extension, which has resulted in the impugned notice being issued asking the consent of the contractors for extension of the existing contract, initially for a



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period of one year and, thereafter, extension of six months with further extension of another six months, in all for a period of two years. Challenging this notice, the present petition has been filed.

29. The main ground on which the petitioners challenge the impugned notice is that clause 1.9 of the tender conditions only permits extension for a period of six months and further, any extension beyond the said period would result in detriment to the petitioners as they would be precluded from providing more trucks and at higher rates. Therefore, the petitioners contend that the present impugned notice is in violation of the constitutional mandate, as it infringes Article 14 and 19 (1) (g) of the Constitution.

30. There is no quarrel about the fact that the contract can be extended and provision therefor, is provided under clause 1.9. Clause 1.9 of the terms and conditions of the tender provides that the contract period could be extended for a period of six months or till a new tender is finalised, whichever is earlier. A careful reading of the said clause shows that the extension is at the mutual agreement between the parties. When that is the undisputed



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position, when the parties to the contract, viz., the transport contractors and the respondents agree on extending the contract by a period of two years, with initial extension by one year and, thereafter, by six months and a further period of six months thereafter, there cannot be said to be any breach of the terms of the tender. The petitioners, being one of the contractors, if not agreeable with the extension, the course open to the petitioners is only to desist from going ahead with the extension and to wait for the publication of the new tender and it is not open to the petitioners to contend that the respondents have no power or authority to grant any extension.

31. It is to be pointed out that so long as there is no violation of Articles 14 and 19 (1) (g), the extension granted by the respondents cannot be said to be perverse or arbitrary. In the case on hand, the respondents have granted the same extension to all the transport contractors across the board on the same terms, as has been agreed while initial tender was awarded to the successful bidders. The said fact is not disputed by the petitioners. Such being the case, the stand of the petitioners that there is violation of Article 14 and 19 (1) (g) is wholly misconceived. It is to be pointed out that the



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respondents cannot be forced to go ahead with a new tender and if the contracting parties agree for extension on mutual terms, agreeable to either party, for just and valid reasons, then the said act cannot be said to be perverse or arbitrary and unsustainable.

32. The decision in *Sterling Computers case (supra)* relied on by the learned counsel for the petitioners cannot further the case of the petitioners as in the said case, the contract was given to a single entity for publishing directories, which was extended for a further period without going for a new tender. The Supreme Court, finding fallacies in the said extension had interfered with the said extension. However, the case on hand falls on a different sphere. In the present case, the contract has been granted to various parties, including the petitioners, which is sought to be extended for all the transport contractors, including the petitioners. Neither there is violation of equality nor the petitioners were treated differently. Moreso, no third party, who was an successful bidder has come before this Court questioning the act of the respondents. The petitioners, being successful contractors, who have been providing trucks to the respondents, cannot



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question the extension, quoting their individualistic loss in a new tender not being called, when a policy decision is taken by the respondents, for just and valid reasons, for extending the tender for a further period.

33. In this regard, it is useful to refer to the relevant portion of the decision in *Sterling Computers case*, which stares on the face of the petitioners, and the same is quoted hereunder :-

“12. At times it is said that public authorities must have the same liberty as they have in framing the policies, even while entering into contracts because many contracts amount to implementation or projection of policies of the Government. But it cannot be overlooked that unlike policies, contracts are legally binding commitments and they commit the authority which may be held to be a State within the meaning of Article 12 of the Constitution in many cases for years. That is why the Courts have impressed that even in contractual matters the public authority should not have unfettered discretion. In contracts having commercial element, some more discretion has to be conceded to the authorities so that they may enter into contracts with persons, keeping an eye on the augmentation of the revenue. But even in such matters they have to follow the norms recognised by



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Courts while dealing with public property. It is not possible for Courts to question and adjudicate every decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that Courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of "play in the joints" to the executive."

(Emphasis Supplied)

34. Useful reference can also be had to the decision of the Supreme Court in *Premium Granites case (supra)*, wherein it has been held as under :-

"54. It is not the domain of the court to embark upon uncharted ocean of public policy in an exercise to



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consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be. The court is called upon to consider the validity of a public policy only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution of India or any other statutory right. In our view, it will not be correct to contend that simply because under Rule 8(C) of the Mineral Concession Rules, quarry leases are to be granted to particular agency or agencies, exemption from the operation of the said rule cannot be made with the aid of the other provisions of the Mineral Concession Rules. If all the provisions of the Mineral Concession Rules are held to form an integrated scheme then each of such provisions must be held to be mutually complimentary. It will therefore, not be proper to hold that a policy decision envisaged in Rule 8(C) cannot be modified with the aid of the other provisions of the Mineral Concession Rules and in its field of operation, the said Rule 8(C) holds a supreme position. The application of Rule 8(C) should be understood and held as subject to other provisions in the Mineral Concession Rules.”



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35. In **Silppi Constructions Contractors – Vs – Union of India &Anr.**

(2020 (16) SCC 489), the Supreme Court, advertent to the manner in which the Courts should deal with matters relating to contract, relying upon its earlier decisions, held as under :-

*“9. In **Air India Limited vs. Cochin International Airport Ltd.**, this Court once again stressed the need for overwhelming public interest to justify judicial intervention in contracts involving the State and its instrumentalities. It was held that Courts must proceed with great caution while exercising their discretionary powers and should exercise these powers only in furtherance of public interest and not merely on making out a legal point.*

* * * * *

*11. In **Master Marine Services (P) Ltd. vs. Metcalfe & Hodgkinson (P) Ltd.** it was held that while exercising power of judicial review in respect of contracts, the Court should concern itself primarily with the question, whether there has been any infirmity in the decisionmaking process. By way of judicial review, Court cannot examine details of terms of contract which have been entered into by public bodies or State.*

* * * * *

*14. In **Michigan Rubber (India) Ltd. vs. State of Karnataka &Ors.** it was held that if State or its instrumentalities acted reasonably, fairly and in public*



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interest in awarding contract, interference by Court would be very restrictive since no person could claim fundamental right to carry on business with the Government. Therefore, the Courts would not normally interfere in policy decisions and in matters challenging award of contract by State or public authorities.

*15. In **Afcons Infrastructure Ltd. vs. Nagpur Metro Rail Corporation Ltd.** it was held that a mere disagreement with the decisionmaking process or the decision of the administrative authority is no reason for a constitutional Court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional Court interferes with the decisionmaking process or the decision. The owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional Courts but that by itself is not a reason for interfering with the interpretation given.”*

36. As already aforesaid, in the case on hand, the petitioners disagree with the decision making process of the administrative authorities in



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extending the tender period by a further period of two years, initially by one year and, thereafter, by two six months period. The disagreement of the petitioners with the said decision of the respondents cannot be a ground for this Court to interfere as in the case on hand, the transport contractors, who were the successful bidders in the tenders, have all been granted extension to the inclusion of the petitioner. Merely because if a new tender is called the petitioners would stand to benefit both by providing more trucks and also quoting transporting amount as per their discretion cannot be a ground to hold that the extension granted is perverse, arbitrary and illegal. The petitioners are at their will to either go ahead with giving their consent for extension or if it is not conducive from their front, could very well opt out from the extension. The stand of the petitioners that they would stand to benefit if a new tender is called cannot be the basis for this Court to interfere with the decision of the respondents to grant extension, so long as the decision of the respondents is based on reasonableness and the decision-making process is just and proper.



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37. Further, the notice impugned herein, issued by the respondents also reveal the thought-process of the respondents and the manner in which the decision has been arrived at without leaving all the stakeholders, including the transport contractors, which shows that the respondents have taken all the factors into consideration, including the monetary stress that would fall on the head of the transport contractors and have provided the necessary safeguards in the notice and had called upon the transport contractors to give their consent to the said proposal. Therefore, it is clear that the extension is not only by mutual consent, but the consent is left to the discretion of the transport contractors, who were open to assess their position before giving their consent. This clearly shows that the respondents have acted in a reasonable manner and no fault can be put on the stand taken by the respondents, moreso, when the terms of the tender, particularly clause 1.9 provided for extension, which has been resorted to by the respondents.

38. On an overall consideration of all the materials coupled with the ratio laid down by the Apex Court with regard to interference in the matters relating to contract, this Court is of the considered view that the case of the



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petitioners does not deserve consideration, as there is no illegality, perversity, arbitrariness or violation of equality in the manner in which the extension is sought to be granted to the transport contractors, including the petitioners. Therefore, the notice impugned herein does not call for any interference at the hands of this Court.

39. For the reasons aforesaid, the present writ petition is devoid of merits and, accordingly, the same is dismissed. Consequently, W.M.P. No.10357 of 2023 is also dismissed. However, it is open to the petitioners to accept the extension of the contract put forth by the respondents and, thereafter, on the issuance of a fresh tender by the respondents, participate in the same and the order passed above will not be a bar for the petitioners to accept the extension of contract. There shall be no order as to costs.

11.04.2023

Index : Yes / No

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1. The Chief General Manager (LPG-S&D)
M/s.Indian Oil Corporation Ltd.
Indian Oil Bhavan
139, Nungambakkam High Road
Chennai 600 034.
2. The Territory Manager (LPG)
M/s.Bharat Petroleum Corporation Ltd.
No.1, Ranganathan Garden
Off 11th Main Road
Anna Nagar, Chennai 600 040.
3. Dy. General Manager – LPG Region
Hindustan Petroleum Corporation Ltd.
Petro Bhavan, 3rd Floor, No.82, TTK Road
Alwarpet, Chennai 600 018.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.10405 OF 2023**

**Pronounced on
11.04.2023**