



W.P.No.8597 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 27.03.2024**

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**THE HONOURABLE DR.JUSTICE ANITA SUMANTH**

**W.P.No.8597 of 2024  
and WMP No.9559 of 2024**

Freyr Energy Services Pvt. Ltd.,  
represented by its Managing Director,  
Saurabh Marda  
having its registered office at  
Plot No.154, Kavuri Hills, Phase 2,  
Madhapur, Hyderabad – 500 033.

.... Petitioner

Vs

Indian Oil Corporation Limited  
represented by its Chief General Manager (LPG)  
Tamil Nadu State Office,  
Indian Oil Bhavan,  
139, Uthamar Gandhi Salai,  
Nungambakkam, Chennai – 600 034.

.... Respondent

**Prayer:** Petition filed under Article 226 of the Constitution of India  
praying to issue a Writ of Certiorari calling for the records relating to  
Holiday Listing Letter dated 27.02.2024 issued by the respondent and  
quash the same.

For Petitioner : Mr.Anirudh Krishnan

For Respondents : Mr.Mohammed Fayaz Ali.



W.P.No.8597 of 2024

WEB COPY

## **ORDER**

Mr.Mohammed Fayaz Ali, learned counsel accepts notice for the respondent and is armed with instructions to enable a final disposal of this matter, even at the stage of admission.

2. The petitioner had participated in, and had been awarded a tender floated by the Indian Oil Corporation Limited for design, engineering, supply, packing and forwarding, transportation, unloading, storage, installation, testing, commissioning and free operation and maintenance for one year of 100 KWp On-Grid roof top Solar PV plant with net metering at Tirunelveli LPG Bottling plant, Tamil Nadu with further comprehensive maintenance of the plant under AMC for four years.

3. The petitioner's bid was found acceptable and a work order had been issued on 19.10.2022. Though the affidavit sets out various particulars in regard to the trajectory that the work order itself took, suffice it to say that the petitioner's work was found unsatisfactory and a show cause notice was issued on 21.03.2023 as to why action not be taken for violation of the clauses in the contract including termination of the contract and holiday listing/blacklisting.



W.P.No.8597 of 2024

WEB COPY

4. The respondent also proposes that an alternate agency would be engaged to continue and complete the work at the risk and cost of the petitioner and that their security deposit/performance guarantee will be forfeited. The same proposal has been echoed in subsequent show cause notices dated 24.05.2023 and 17.07.2023. The petitioner has responded to all the show cause notices on 04.04.2023, 01.06.2023 and 31.07.2023 respectively.

5. Not satisfied with the explanation tendered, the contract has been terminated vide order dated 09.08.2023, which is unchallenged as on date. While this is so, the impugned order has come to be passed on 27.02.2024 after a gap of seven months from the date of last show cause notice.

6. That apart, no opportunity of personal hearing has been afforded to the petitioner. The Holiday Listing Guidelines of Indian Oil Corporation Ltd (in short 'Guidelines') stipulate a procedure for blacklisting that provides for issuance of a prior show cause notice.

7. Clause 3 of the Guidelines reads as follows:

**3. Show Cause Notice:**

*a) Before placing the party on holiday list, a fair opportunity of hearing the party shall be given by means of a*



WEB COPY



W.P.No.8597 of 2024

*Show Cause Notice. The Show Cause Notice should be issued to the Party before placing the party on holiday list except for cases under Cl 2.2.*

*b) A proforma of the Show Cause Notice is enclosed **Attachment – 1**. A reasonable time (of 15 days) for a reply to the show cause notice shall be given. This time may be extended at the request of the party, if so warranted, for a period not exceeding 7 days.*

*c) The Show Cause Notice shall be issued to the party and a copy may be endorsed to its CEO (Chairman/President/Managing Director/Proprietor/Managing Partner etc.)*

*d) The decision to place the party on holiday list shall be taken considering the reply, if any of the party, and by passing a reasoned Speaking Order in respect of all the allegations contained in the Show-Cause notice.'*

8. Thus, there is no necessity to afford a personal hearing to the petitioner under the Guidelines. The replies to the show cause notices also do not specifically seek an opportunity of personal hearing. In the last reply dated 31.07.2023, the petitioner, in conclusion, requests a revised timeline extension upto 25.08.2023 to complete the project installation successfully.

9. It is relevant to note that the show cause notices were issued in common for both termination as well as blacklisting. The order of termination dated 09.08.2023 extracts the special terms and conditions of contract including clause 79 which deals with blacklisting. The conclusion is however restricted categorically to termination alone.



W.P.No.8597 of 2024

WEB COPY

10. The petitioner has been in correspondence with the respondent thereafter as well by way of e-mails and the issue of blacklisting has not reared its head again. The order of termination of contract passed on 09.08.2023 does not give any indication that, along with the termination, the respondent proposes to proceed with the blacklisting.

11. The lack of personal hearing in this matter must thus be seen in the context of the sequence of events as above. The manner in which the events have unfolded are sufficient to lead me to a conclusion that the impugned order of blacklisting is contrary to the principles of natural justice.

12. It might have been a different scenario had the impugned order had been passed proximate to the receipt of reply from the petitioner on 31.07.2023. However, this has not been done and the respondent has passed the impugned order of blacklisting after a period of nearly seven months.

13. Thus, for the reasons that i) order of termination dated 09.08.2023 and subsequent silence for a period of six months gives an impression that the proposal for blacklisting has been dropped and ii) during the interim period, between 31.07.2023 and 27.02.2024, there was



W.P.No.8597 of 2024

no communication in regard to the proposal for blacklisting, I am of the view that there has been violation of the principles of natural justice.

14. The submission of the learned counsel for the respondent is that the tender conditions permit the respondent to both terminate the contract in the event of non-performance, and blacklist the contractor.

15. There is no quarrel on this aspect as it is the absolute discretion of the respondent to both terminate the contract and blacklist the contractor if the tender conditions so permit. However, such discretion requires proper procedure to be followed.

16. For the above reasons, impugned order dated 27.02.2024 is set aside. The petitioner will appear before the sole respondent on 05.04.2024 at 10.30 a.m. without awaiting any further notice in this regard. The respondent shall hear the petitioner and pass orders on the proposals for blacklisting contained under show cause notices dated 21.03.2023, 24.05.2023 and 17.07.2023 in accordance with law, all applicable guidelines and tender conditions by way of a speaking order, within a period of four (4) weeks from 05.04.2024.

17. It is made clear that the challenge to the order of blacklisting on the merits thereof, including on the aspect of proportionality, are left open.



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W.P.No.8597 of 2024

18. This Writ Petition is disposed in the aforesaid terms. No costs.

Connected Miscellaneous Petition is closed.

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**27.03.2024**

Index: Yes/No

Speaking order

Neutral Citation: Yes

To

Indian Oil Corporation Limited  
represented by its Chief General Manager (LPG)  
Tamil Nadu State Office,  
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139, Uthamar Gandhi Salai,  
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W.P.No.8597 of 2024

**Dr.ANITA SUMANTH,J.**

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**W.P.No.8597 of 2024  
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