

05.05.2025
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ct. no.24

WPA 9163 of 2025

**M/s. Namirah Logistics & Anr.
Vs.
Hindustan Petroleum Corporation Ltd. & Ors.**

Mr. Debabrata Saha Roy, Sr. Adv.,
Mr. Subhankar Das
..... for the petitioners.

Mr. Biswanath Chatterjee,
Mr. S.K. Pathak,
Mr. S.K. Chatterjee
....for the respondent No.1-9.

Hindustan Petroleum Corporation Ltd. (HPCL)
authority floated e-tender for transportation of Bulk
White Petroleum Products (MS/HSD) by road Ex-
Mourigram TOP vide a Tender document dated 20th
September, 2024.

The petitioners participated in the subject e-
tender floated by the (HPCL) by offering is 08 numbers
of his owned Truck Tankers (TTs).

It is the case of the petitioners that at the time
of participation in the said tender, petitioners offered
08 (TTs) stating to be all free (TTs), that is to say,
none of the (TTs) are engaged with other Oil
marketing Companies.

It is the positive assertion of the petitioners that
amongst the 08 (TTs), 04 (TTs) were engaged with
Indian Oil Companies (IOCL) who assured through

official communication that on 9th of October, 2024, all the 04 (TTs) would be released.

On the basis of their assurance, the petitioners participated in the tender stating the fact that all the 08 (TTs) are free (TTs). So, after compliance all the formalities, the petitioners being successful bidder HPCL authority had issued Provisional Letter of Acceptance in favour of the petitioners on 18th of December, 2024 in respect of his 06 (TTs). In terms of the said Letter of Acceptance (LOA) petitioners placed all 06 (TTs) including required documentation particulars and also submitted the security deposit with HPCL. At the time of induction, it appears to the HPCL authority that amongst 06 (TTs), 04 (TTs) are already under the Valid Contract with IOCL. Accordingly, the HPCL has issued a show cause notice upon the petitioners alleging, inter alia, that:

"Therefore, through your act of providing false/incorrect information regarding the fact that they are not running under contract with any other OMCs pertaining to the 4 TTs that you have offered under the Transport Agreement you have violated Clause 45(k) under the Head-Instructions to the Bidder under the Tender Document; Clauses 22(d), (e) and (f); and Clauses 2.1.2 and 8.2.1 of the Transport Discipline Guidelines. Hence, we are entitled to terminate the Transport Agreement, forfeit your Security Deposit, Blacklist all your 6 TTs or take

any other action as per Clause 45(k) under the Head-Instructions to the Bidder under the Tender Document, Clauses 22(d), (e) and (f) and 25 of the Transport Agreement; and Clauses 8.2.2.14, 8.2.2.15 & 8.2.2.16 and 8.2.2.18 of the Transport Discipline Guidelines.

In view of the above, you are hereby called upon to explain within 15 days of this Notice as to why the Transport Agreement dated 11.02.25 should not be terminated, EMD/Security Deposit should not be forfeited, and all 6 TTs should not be terminated due to false and incorrect information provided by you in the tender as well as document verification process”.

Petitioners replied to the show cause and it has been specifically stated in the said reply that:

"Since there were repeated assurances by the IOCL Guwahati that all our four attached TTs shall be released before submission of our e-tender with your Oil Company, we were under impression that if we filled in dotted column of your tender documents and declaration that our four those offered TTs are running other transport contract with IOCL, that will be a false undertaking and declaration, which may debarred us to participate in the subject tender.

We had and/or have any mala fide intension to suppress and conceal any material facts or misrepresentation but there may be little mistake rather misunderstanding with bona fide intension, accordingly, we do hereby request you to allow us to place our all four offered TTs for induction at any day by accepting NOC dated 27.03.2025 and allow us to load petroleum

product and transport the same through our all 6 offered TTs".

After replying to the show cause notices, hearing was conducted, petitioners participated in the said hearing. Thereafter, on 10th of April, 2025 impugned order of termination was issued by the concerned authority, operative portion of impugned order is as follows:-

"Based on your explanation in your Reply Letter dated 05.04.2025 & personal hearing on 07.04.2025, it is evident that on the date of submission of your bid in Tender No. 2400016137-HD-09050, all the said 4 TTs were in contract with IOCL and remain in contract with IOCL even after entering into transport agreement dated 11.02.25 with HPCL. However, this information/declaration was neither shared with the Corporation during the Tender process, including at the time of the document verification process, nor before or after signing the transport agreement.

Therefore, we find your explanation as recorded in the Minutes of Personal Hearing dated 07.04.2025 and Reply Letter dated 05.04.2025 not satisfactory due to the reasons mentioned above.

Therefore, we hereby terminate the Transport Agreement under Clauses 22(d), (e) and (f) of the Transport Agreement, blacklist

your 6 TTs-WB11E7149, WB11E7158, WB11E7167, WB11E7185, WB11D0192, and WB11D0292 for 2 years, w.e.f. 10/4/2025, on Industry \wide basis under Clauses 8.2.2.14, 8.2.2.15 and 8.2.2.16 of the Transport Discipline Guidelines; and forfeit your Security Deposit under Clause 25 of the Transport Agreement.

Accordingly, your Bulk Petroleum Product Road Transport Agreement dated 11.02.2025 is hereby terminated with immediate effect”.

Challenging the impugned order of termination issued by the HPCL the instant writ petition has been preferred.

Mr. Debabrata Saha Roy, learned senior counsel appearing on behalf of the petitioners submits that the impugned order of termination is baseless and not reasonable. He submits that the concerned authority has acted mala fide in passing the impugned order of termination. He further submits at best the the 04 (TTs) which was engaged with the IOCL, can be blacklisted or not allowed to be operated but entire fleet cannot be blacklisted. He further submits that two free (TTs), which were plying to the HPCL may be allowed to be continued in terms of the agreement.

In support of his contentions, Mr. Saha Roy has placed a decision of Hon’ble Division Bench of this Court passed in ***Indian Oil Corporation Ltd. & Ors – Vs- Ajit Kumar Murmu (MAT 1905 of 2024).***

Mr. Saha Roy submits that the Hon'ble Division Bench in a similar set of facts, wherein the information of a Truck Tankers (TTs) given by the tenderer was appears to be false by which the concerned Oil Company has terminated the entire fleet by blacklisting it, the Hon'ble Division Bench on the same set of fact has observed that:

"18. Initially, the show-cause notice called upon the writ petitioner to submit documents to justify the declaration of month and year of manufacture of 7 out of the 14 TTs offered by them. Writ petitioner submitted documents and the Oil Company was satisfied there was no incorrect declaration with regard to 6 of the TTs. However, the month and year of manufacture of one TT bearing registration No. WB 11C5642 was found to be incorrectly made as November, 2011 instead of October 2014 as appearing from registration office records. As per Clause 8.2.2.13 of ITDG, this would justify the blacklisting of this TT only. However, Mr. Nag relies on a sub-para in Clause 8.2.2.2 which, inter alia, provides in case complicity of the contractor is established even in first instance of malpractice, entire fleet shall be blacklisted, contract terminated and security deposit forfeited. He also relies on Clause 19 of the tender conditions which, inter alia, provides in case false, forged information is detected subsequent to award of contract, the contract is liable to be terminated.

19. aforesaid clauses make it amply clear mere submission of a forged/false information

with regard to one or some of the TTs would not ipso facto lead to termination of the contract as a whole or blacklisting of the entire fleet. It must be borne in mind that an order of blacklisting on an industry basis would tantamount to a commercial death of the contractor. This extreme penalty is reserved for those egregious cases where the Oil Company is able to establish complicity of the contractor in the malpractice. The word 'complicity' means active connivance or participation in wrong doing or a crime. That is to say, fake document or false information relied upon by the contractor must be used with the requisite intention to deceive or defraud the Oil Company and thereby gain unfair advantage".

Mr. Saha Roy also placed a decision of this Court in ***Prasanta Soren -Vs- Hindustan Petroleum Corporation Ltd. & Ors.*** wherein this Court also has taken the similar view and passed an interim order in respect of an order of termination passed by the HPCL where the tenderer failed to produce some of the (TTs) according to the stipulation of contract. This Court has also directed the concerned authority to carry with the agreement for rest free Truck Tankers (TTs).

Mr. Saha Roy has argued clearly and unequivocally that the petitioner was misguided by the IOCL authority. Thus, he placed the tender showing that all the TTs are free TTs.

Mr. Saha Roy further argued that the petitioner was under impression that before submission of the

tender document the (TTs) would be free. He submits that no mala fide intention or advantage or misrepresentation has demonstrated in this case, which can entail the petitioner in any advantages in the tender. Thus, Mr. Saha Roy argues, the conduct of the petitioner can be termed as an unintentional laches and the petitioners may be allowed to ply two free (TTs) except the 04 (TTs) which were engaged with IOCL. So, he prayed for an interim order in this matter.

Mr. Biswanath Chatterjee, learned counsel appearing on behalf of the IOCL initially submits that this writ court has no jurisdiction to entertain the writ petitioners.

Mr. Chatterjee further submits that there are no errors apparent in the order itself. Moreover, the order passed by the concerned authority is not at all unreasonable. Mr. Chatterjee has placed the (LOA) and the copy of agreement. He submits that the Letter of Acceptance (LOA) has specifically mentioned that if the tenderer failed to comply with any formalities mentioned in the contract agreement as well as the (LOA), the Letter of Acceptance may be cancelled and necessary action can be taken by the authority.

He further submits that admittedly the petitioners have stated falsely that all the 08 (TTs) are

free (TTs). Admittedly, amongst the 06 (TTs) in favour of which the (LOA) was offered, 04 (TTs) are engaged with other Oil Marketing Company (IOCL).

He further submits that the intention of the petitioners can be gathered that he tried to ply the 04 (TTs) simultaneously with two Oil Companies. He submits that as there is no arbitrariness in passing the impugned order of termination by the HPCL, thus, the writ petitioner has no scope to challenge the order of termination before this writ Court.

He further submits that the writ petitioner never informed the authority regarding the attachment of 04 (TTs) with IOCL rather when all 06 (TTs) are placed for induction through a specific agency it noticed that amongst them 04 (TTs) are already engaged with the IOCL with a valid contract.

Mr. Chatterjee has also placed the Oil Industry Transport Discipline Guidelines (OITDG) and the relevant provisions of 8.2.2.14, 8.2.2.15 and 8.2.2.16 to justify the act and action of the concerned authority.

Mr. Chatterjee heavily relied upon the decision of Hon'ble Apex Court regarding scope of judicial review by a High Court under Article 226 of Constitution of India in a tender process. He placed the decision of Hon'ble Apex Court as follows:-

Banshidhar Construction Private Limited – Vs-Bharat Coking Coal Limited and Others reported in ***(2024) 10 SC 273.***

N.G. Projects Limited –Vs- Vinod Kumar Jain and Others reported in ***(2022) 6 SCC 127.***

Agmatel India Private Limited –Vs- Resoursys Telecom and Others reported in ***(2022) 5 SCC 362.***

Heard the learned advocates perused the observation of Hon'ble Apex Court in the judgment as relied by Mr. Chatterjee.

The Hon'ble Apex Court in deciding the issue of scope of judicial review in the tender process has detailed about different judgments of Hon'ble Apex Court in ***Silppi Constructions Contractors V. Union of India (2020) 16 SCC 489, Galaxy Transport Agencies V. New J.K. Roadways (2021) 16 SCC 808, Tata Cellular V. Union of India, (1994) 6 SCC 651, Jagdish Mandal V. State of Orissa, (2007) 14 SCC 517 and Afcons Infrastructure Ltd. V. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818.***

In ***Silppi Constructions Contractors V. Union of India*** the Hon'ble Apex Court has held that:

"20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for

overwhelming public interest to justify judicial intervention in the matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realize that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case".

In ***Jagdish Mandal V. State of Orissa*** the Hon'ble Apex Court has held that:

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to

award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached".

(ii) Whether public interest is affected

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises)”.

In ***N.G Projects Ltd. V. Vinod Kumar Jain*** the Hon'ble Apex Court after considering all relevant earlier judgments has held that:

"23. In view of the above judgments of this Court, the writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the

execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens".

In ***Tata Cellular V. Union of India*** the Hon'ble Apex Court has decided the issue of principles where the High Court can entertain a writ petition regarding judicial review of administrative decision under Article 226 of Constitution of India as follows:

"32. In Tata Cellular V. Nion of India, this Court had laid down certain principles for the judicial review of administrative action: (SCC pp. 687-88, para 94)

"94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.***
- (2) The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.***
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.***
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is***

reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure”.

Mr. Chatterjee after referring all the judgments of Hon’ble Apex Court has submitted that the Hon’ble Apex Court has made clear of the fact that if the decision of the authority is not arbitrary there is no scope of judicial review and the interference of a High Court under Article 226 of the Constitution of India.

He further submits that in the present case, the petitioner has stated falsely, from its inception, that all (TTs) are free (TTs) but fact suggests that the 04 (TTs) were engaged with IOCL, hence the decision of

authority cannot be said to arbitrary or perverse. He further submits that the entire writ petition is liable to be dismissed.

Having heard the learned counsel for the parties and considering the entire matter; it appears that the concerned authority has terminated the agreement of the petitioner with the HPCL in terms of Clause 8.2.12.14, 8.2.2.15 and 8.2.2.16 for better understanding. The Clauses under Oil Industry Transport Discipline Guidelines required to be set out:

8.2.2.15	<i>Unauthorized use of TT outside the contract</i>	<i>TT shall be blacklisted.</i>
8.2.2.15	<i>(a) Entering into contract based on forged documents/false information.</i> <i>(b) Submission of forged documents during the contract period.</i>	<i>Entire fleet along with carrier to be blacklisted, SD to be forfeited, and the transportation Contract to be terminated.</i> <i>Concerned TT shall be blacklisted.</i>
8.2.2.16	<i>Entering into an agreement for the same IT with other oil companies.</i>	<i>Concerned TT shall be blacklisted.</i>

Mr. Saha Roy submits that in terms of those clause, the unauthorized TTs which were engaged with the IOCL may be blacklisted not the entire fleet.

Mr. Chatterjee submits, on contrary, that the petitioner has stated falsely at the time of participation of the tender thus his agreement as well as the (LOA) liable to be cancelled thus the impugned order of cancellation is justified.

It appears from the observations of the Hon'ble Division Bench that mere submission of a forged or false information with regard to one or some of the TTs would not ipso facto lead to termination of the contract as a whole or blacklisting of the entire fleet.

It appears that the facts in issue before the Division Bench is that the tenderer has placed one (TT) stated to be registered in October, 2014 though it was registered in November, 2011. Such false information led to the Oil Companies to terminate entire fleet of the Contractor.

The Hon'ble Division Bench has specifically observed that the complicity of the contractor was not proved in that case, it was before the Hon'ble Division Bench that by placing a TT wrongly mentioned that it was newly registered, which cannot entail him any gain or advantage in participating the tender. Thus, the Hon'ble Division Bench has observed that false

information as stated by the contractor at the time of participation of the tender thereby has not gained any unfair advantage in favour of tenderer.

In the present case the fact situation suggests that admittedly at the time of participation in the tender the petitioner was aware that 04 of his (TTs) were engaged with IOCL. The provisions is made in the tender document that the tenderer can place attach (TTs) also. But, in this case, the petitioner has specifically stated in the tender document all the (TTs) are free (TTs). When all the TTs (6) (TTs) were placed for induction, it appears that 04 (TTs) engaged with IOCL. The petitioner was issued show cause notice wherein the petitioner has replied that the mistake of the petitioner was unintentional and he was misguided by the act and action of the other Oil Marketing Companies (IOCL) who stated that the all 04 (TTs) would be realized. The HPCL authority has heard the petitioners and issued the order of termination.

It is true that the concerned HPCL authority has not considered the reply to the show cause of the petitioner and acted according to the terms of the contract. According to the decision of Hon'ble Apex Court in Tata Cellular (supra), writ court has a very limited power to interfere in tender matters. Following the observations of the Apex Court, I am of a view

that if the (HPCL) authority allowed to be considered and acted upon the reply to the show cause of the petitioner regarding the grounds mentioned therein for submission of TTs to be free TTs, the same consideration thereof would be not just and proper for the concerned authority. The terms of the agreement in the contract itself is not only binding upon the tenderer but also the Oil Marketing Companies. The Oil Marketing Companies are to act according to the rules and the Oil Industry Transport Discipline Guidelines if they followed to accept the explanation to the show cause by the petitioner they would otherwise provide advantage to the petitioner.

It appears that act and action of this authority is with the provision and scope of OITDG

On that score, after examining all the matters, I am of the clear view the decision of the concerned authority is not at all mala fide or arbitrary. Furthermore, I observed that the observation of the Hon'ble Division Bench in Ajit Kumar Murmu and facts thereof is totally different thus the ratio of Hon'ble Division Bench is distinguishable. This Court is quite dark why the petitioner has not stated the fact that 04 (TTs) are attached to with the (IOCL), the explanation of petitioner has merit. The tender document has allowed the petitioner/tenderer to disclose the fact of

attached TTs, in all the relevant portions of tender document the petitioner has disclosed that all the (TTs) are free TTs. The intention of the petitioner in submission of the tender document appears not to be very prudent or convincing.

At this juncture, I find no justification to entertain the writ petition.

Accordingly, the writ petition is appears to be not meritorious and the same is hereby dismissed and disposed of.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)