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W.P.Nos.34553, 34556,
34559 & 38746 of 2024

In the High Court of Judicature at Madras

Reserved on 01.8.2025	Delivered on : 06.8.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition Nos.34553, 34556, 34559 & 38746 of 2024
& WMP.Nos.37463, 37465, 37471, 41954 & 41955 of 2024

C.Padmambigai, Proprietor of
Dolphin Logistics, Chennai-118.

...Petitioner in
both WP.Nos.
34553 & 38746
of 2024

J.Kathiravan, Proprietor of
Sri Garuda Logistics,
Chennai-11.

...Petitioner in
WP.No.34556 of
2024

M.Chinnapaiyan, Proprietor of
Sri Selva Lakshmi Transport,
Chennai-60.

...Petitioner in
WP.No.34559 of
2024

Vs

1.Oil and Natural Gas Corporation
Ltd., rep.by the Deputy General
Manager - Head MM, Cauvery
Asset, Neravy Complex,
Karikal - 609604.



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2.Oil and Natural Gas Corporation
Ltd., rep.by its Senior MMO,
Cauvery Asset, Neravy Complex,
Karikal - 609604.

...Respondents in
WP.Nos.34553,
34556 & 34559
of 2024 & R1 &
R2 in WP.No.
38746 of 2024

3.M/s.Kamalakannan Road
Transport, rep.by its
Proprietor, Chennai-102.

4.The Deputy Director, Office of
the Development Commissioner,
Micro, Small, Medium Enterprises-
Public Procurement Policy,
Nirman Bhavan, New Delhi.

5.The Director, Ministry of
Commerce & Industry,
Department for Promotion of
Industry & Internal Trade
(Public Procurement Section),
Udyog Bhawan, New Delhi.

...R3 to R5 in
WP.No.38746 of
2024

PETITIONS under Article 226 of The Constitution of India praying
for the issuance of

(i) a Writ of Certiorarified Mandamus to call for the records
pertaining - the bid evaluation criteria in tender document for hiring of
the service for transportation of crude oil by road tankers from



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productions installations of Cauvery Asset, ONGC to M/s.CPCL Manali Refinery, Chennai vide Tender No.V16KC24005 vide No.KKL/ CAU-ASSET/MM/2024/1364232 dated 05.9.2024 issued by the 1st respondent, quash the same and issue fresh tender notification without the onerous conditions like the bid evaluation criteria (WP.Nos.34553, 34556 & 34559 of 2024); and

(ii) a Writ of Certiorarified Mandamus (a) to call for records of the award of the tender entirety given to the respondent No.3 in Tender No.V16KC24005 vide No.KKL/CAU-ASSET/MM/2024/1364232/ KKRT dated 08.11.2024, quash the same and direct the respondents 1 and 2 to re-tender the work or cancel the LOA issued to the respondent No.3 due to non submission of performance bond on or before 23.11.2024 and violation of non reporting of tank trucks and using tank trucks, which are more than 7 years of manufacture and capacity less than 24KL and the quantity of business can be reallocate it is accordance with the terms and conditions of the original tender by dividing the work; and (b) to call for the records pertaining to the tender document for hiring of the service for transportation of crude oil by road tankers from productions installations of Cauvery Asset, ONGC to M/s.CPCL Manali Refinery, Chennai vide Tender No. V16KC24005



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vide No.KKL/CAU-ASSET/MM/2024/1364232 dated 05.9.2024 issued by the 1st respondent, quash the same and issue fresh tender notification without the onerous conditions of the bid evaluation criteria (WP.No.38746 of 2024).

For Petitioners in
all the WPs : Mr.Satish Parasaran, SC for
Mr.Najeeb Usman Khan

For ONGC in
all the WPs : Mr.AR.L.Sundaresan, ASGOI
assisted by
Mr.Mohammed Fayaz Ali,
Standing Counsel

For R3 in
WP.No.38746 of
2024 : Mr.Vijay Narayan, SC for
Mr.Thomas T.Jacob

For R4 & R5 in
WP.No.38746 of
2024 : Mr.K.Ramamoorthy,
Senior Panel Counsel - GoI

COMMON ORDER

All the above writ petitions have been filed challenging the bid evaluation criteria in the tender document for hiring of service for transportation of crude oil by road tankers on the ground that the



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Public Procurement Policy of the MSME, 2012 dated 23.3.2012 (for short, the 2012 order) after amendment, mandates that out of 25% of the total annual procurement from the MSEs, 4% must be reserved for the Micro and Small Enterprises (for short, the MSEs) owned by Scheduled Caste/Scheduled Tribe (SC/ST) entrepreneurs and 3% must be reserved for the MSEs owned by women entrepreneurs and that the same was not provided in the present tender.

2. In addition to that, in W.P.No.38746 of 2024, the petitioner has also challenged the award of contract in entirety in favour of the third respondent namely one M/s.Kamalakannan Road Transport, for non submission of performance bank guarantee on or before 23.11.2024 and for using the tank trucks, which are of more than seven years of manufacture.

3. Heard the respective learned counsel on either side.

4. The case of the petitioners is as follows :

(i) During the first week of September 2024, the Oil and Natural Gas Corporation Limited (for brevity, the ONGC) floated a tender



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document for hiring of service for transportation of crude oil by road tankers from the production installations of Cauvery Asset, ONGC to M/s.CPCL, Manali Refinery, Chennai. The period of tender is for three years. The petitioners wanted to participate in the tender process. However, they found that the ONGC included clauses, which cannot be fulfilled. Apart from that, it was found that there was no reservation towards 4% for the MSEs owned by the SC/ST entrepreneurs as well as towards 3% for the MSMEs owned by the women entrepreneurs under the category of 25% to be allotted to the MSMEs.

(ii) The allocation is normally given for a maximum of 10% for a tenderer in order to give opportunity to other tenderers and to avoid monopoly in the business. But, the tender process itself was so designed to ensure that it goes completely in favour of big transporters and thereby 100% business would go in favour of a single tenderer.

(iii) The tender work is divisible in nature and the work was allocated to four vendors in the previous tender. However, in the current tender, the entire 100% work has been allocated to the said M/s.Kamalakannan Road Transport without considering the other 12 qualified bidders. Even though the petitioners were ready to match with L1 rate, such opportunity was never given.



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(iv) The said M/s.Kamalakannan Road Transport ought to have submitted the performance bank guarantee within 15 days of the issue of the letter of award i.e. on or before 23.11.2024 whereas the same was complied with by them on 27.11.2024. In spite of that, the said M/s.Kamalakannan Road Transport was awarded the contract. The tanker capacity must be 29 KL and the number of tankers required was 66 whereas the said M/s.Kamalakannan Road Transport was consistently providing lesser number of tankers and this was also condoned.

(v) Apart from that, the age of the tanker must be seven years whereas the said M/s.Kamalakannan Road Transport was using the tank trucks, which were manufactured beyond seven years. The said M/s.Kamalakannan Road Transport was supposed to use the tanker capacity of 24 to 29 KL for the crude transport. But, the said M/s.Kamalakannan Road Transport was using the tanker below 24 KL and the same was in violation of the tender conditions. Hence, the petitioners are before this Court.

5. The ONGC filed separate counter affidavits in all the cases wherein they took the following stand :



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(i) In so far as the issue of reservation is concerned, 25% reservation for the MSMEs is an annual target of procurement by the ONGC in the tenders floated PAN India. Out of this 25%, the 4% reservation for the MSEs owned by the SC/ST entrepreneurs and the 3% reservation for the MSMEs owned by the women entrepreneurs are also contemplated for the overall annual target. It cannot be questioned by citing a single tender issued by the ONGC. That apart, such a challenge cannot be made by the petitioners after having participated in the tender by accepting all the tender conditions.

(ii) In so far the issue of divisibility of work allotment is concerned, the ONGC took a stand that only if the lowest bidder (L1) was not able to offer to lift 100% of the total tendered quantity, the other bidders, who were next in ranking, would be advised to submit their confirmation to match their rates with those of the L1 bidder. Such a scenario did not take place in the present case and therefore, there was no divisibility of work allotment.

(iii) In so far the issue of delay in executing the performance bank guarantee by the said M/s.Kamalakannan Road Transport is concerned, it should have been given on 23.11.2024 whereas there was a delay of 4 days. On 27.11.2024, it was given by explaining the



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delay and it was accepted with the approval of the Competent Authority as per the circular issued by the ONGC dated 19.11.2024, which authorized the Competent Authority to take an individual decision.

(iv) In so far as the issue regarding placement and specifications of the tank trucks is concerned, as per the existing production needs, the requirement of 66 trucks has been conveyed to the said M/s.Kamalakannan Road Transport as per Clause No.2.5. The said M/s. Kamalakannan Road Transport also provided the required trucks within 15 days. Such breach would attract only penalty and it would not warrant the termination of contract itself. Therefore, wherever there was a breach, penalty was imposed against the said M/s. Kamalakannan Road Transport.

(v) In so far as the issue regarding age of the trucks is concerned, it is not a fundamental breach of contract. But, it would fall under the ambit of imposing penalty. Thus, the ONGC justified awarding the contract in favour of the said M/s.Kamalakannan Road Transport.



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6. The third respondent in W.P.No.38746 of 2024 namely the said M/s.Kamalakannan Road Transport filed a counter affidavit wherein they took the following stand :

(i) The said M/s.Kamalakannan Road Transport adopted the stand taken by the ONGC. In addition, they stated that totally, 19 bidders have participated in the tender. All of them were MSME entities. The petitioner in W.P.No.34553 of 2024, who is none other than the petitioner in W.P.No.38746 of 2024, was L3 and her husband was L7. Both of them were unsuccessful in the price bid process.

(ii) The divisibility of work allotment would arise only between one MSME and a non MSME. In this case, all the 19 bidders were MSMEs. The said M/s.Kamalakannan Road Transport also explained the predicament faced when they were informed that the work must commence from 14.11.2024 whereas the actual work was planned to commence from 23.11.2024. During a short duration, the said M/s.Kamalakannan Road Transport was taken off guard and there was a shortage in the number of vehicles deployed. Wherever such shortage was there, penalty was imposed against the said M/s.Kamalakannan Road Transport.

(iii) In so far as the issue regarding the delay in submitting the



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bank guarantee is concerned, it was properly explained and at the best, there were only four days' delay, which is condonable. Thus, the said M/s.Kamalakannan Road Transport sought for dismissal of the writ petition.

7. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the bid evaluation criteria and the award of contract in favour of the said M/s.Kamalakannan Road Transport.

8. The first issue that was raised by the learned Senior Counsel appearing on behalf of the petitioners is as follows :

As per the 2012 order, special provisions must be made for the MSMEs owned by (a) scheduled caste or scheduled tribes (SC/ST) and (b) women. Even in the clarification given by the concerned Authority, it was made clear that under the amended Public Procurement Policy of the year 2012, a minimum of 25% out of the total annual procurement by the Central Government Ministries, Departments, Public Sector Undertakings is to be made from the MSEs. Out of this 25%, (i) 4% must be earmarked for procurement from the MSEs owned by the



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SC/ST entrepreneurs and (ii) 3% must be earmarked for procurement from the MSEs owned by the women entrepreneurs. It is mandatory to comply with this requirement. However, such a reservation was not followed in the case in hand.

9. On the contrary, the learned Additional Solicitor General appearing for the ONGC submitted as follows :

Out of the 25% of the total annual procurement, the 4% reservation for the MSEs owned by the SC/ST entrepreneurs and the 3% reservation for the MSEs owned by the women entrepreneurs under the 2012 order after amendment are for the overall procurement for the entire year and those public sector undertakings, which failed to meet the annual goal, should substantiate the reasons to the Review Committee. That apart, Clause 4 of the 2012 order also makes it clear that out of the total annual procurement from the MSEs, 3% must be within those 25% target and it has been clarified that this target would apply only to the 358 items reserved for procurement from the MSEs and those items, which are being manufactured by the MSEs besides the reserved items. Therefore, the present case, which involves transport contract, is not covered.



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10. For the submission made by the learned Senior Counsel appearing on behalf of the petitioners that this requirement was scrupulously followed by the public sector undertakings like Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited and Bharat Petroleum Corporation Limited, etc., the learned Additional Solicitor General appearing on behalf of the ONGC submitted that the petitioners, having participated in the tender by accepting the tender conditions, cannot turn around and now question the reservation of 3% not made to the MSE Women.

11. That apart, for the contention of the learned Senior Counsel appearing on behalf of the petitioners that the 3% target was never achieved right from the years 2018-19 upto 2024-25 by the ONGC, the learned Additional Solicitor General replied that the ONGC is progressing towards achieving this target and that even otherwise, if the same could be properly explained to the Review Committee, this ground, by itself, would not invalidate the tender conditions and more particularly when the petitioners have chosen to participate in the tender by accepting the tender conditions.



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12. In so far as the issue of reservation is concerned, the 2012 order after amendment provides that out of the total annual procurement of 25% from the MSEs, 4% of procurement should be mandatorily from the MSEs owned by the SC/ST entrepreneurs and 3% must be for the MSEs owned by the women entrepreneurs. Even in the frequently asked questions regarding the 2012 order, it has been clarified vide Official Memorandum dated 27.1.2022 issued by the Deputy Director, MSME (Public Procurement Policy), Government of India, New Delhi that it is mandatory that out of the total annual procurement of 25%, 4% should be earmarked from the MSEs owned by the SC/ST entrepreneurs and 3% should be earmarked from the MSEs owned by the women entrepreneurs.

13. Question No.41 deals with the items or goods, which can be procured from the MSEs to achieve the target of 25%. It is explained that the items from the list of 358 items reserved for procurement from the MSEs will be covered. That apart, the items, which are being manufactured by the MSEs, will also be covered.



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14. In the case in hand, the tender involves transportation of crude oil by road tankers from the production installation to the refinery and this operation is not covered under both the contingencies. Even otherwise, the 2012 order makes it clear that if the policy of 25% is not able to be met, reasons will have to be given to the Review Committee headed by the Secretary of the MSME. Further, the 25% reservation and the 3% reservation out of the said 25% are targets to be achieved on the annual procurement for all those activities, which took place for the entire year and it is not tender specific.

15. It is true that many of the corporations, in the tender documents, have specifically reserved 4% reservation for the MSEs owned by the SC/ST entrepreneurs and 3% reservation for the MSEs owned by the women entrepreneurs and such a clause is not available in the present tender document. However, the petitioners, having chosen to participate in the tender by accepting the tender conditions, cannot be now permitted to turn around and question the very tender document itself on the ground that the reservations in respect of the MSEs owned by the SC/ST entrepreneurs and the women



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entrepreneurs were not given. If a proper explanation is given even for not achieving the 25% target, the Committee can review the same. If that is the case, not providing 4% reservation for the MSEs owned by the SC/ST entrepreneurs and 3% reservation for the MSEs owned by women entrepreneurs, out of 25%, by itself, will not vitiate the entire tender process. ***Thus, this issue is answered against the petitioners.***

16. The second issue pertains to the delay in submitting the bank guarantee by the said M/s.Kamalakannan Road Transport.

17. As per Clause 17.7(c) of the Instructions to Bidders, a bidder is expected to furnish the performance guarantee within 15 days of the Notification towards such acceptance. It is not in dispute that the date, within which, such a bank guarantee should have been given was 23.11.2024 and the said M/s.Kamalakannan Road Transport had given the bank guarantee only on 27.11.2024. It is relevant to note that the said M/s.Kamalakannan Road Transport sent a letter dated 21.11.2024 to the ONGC stating that due to intervening bank holidays, time must be extended to submit the bank guarantee. Further, the bank



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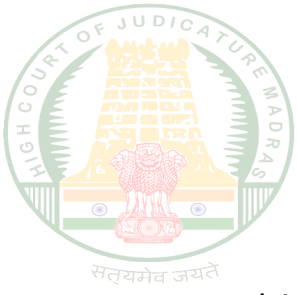
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guarantee was submitted on 27.11.2024. As per the circular issued by the ONGC dated 19.11.2024, discretion is given to condone the delay upto two weeks. In the case in hand, there was a delay of only four days in submitting the bank guarantee. Hence, this delay, by itself, does not vitiate the contract awarded in favour of the said M/s. Kamalakannan Road Transport. ***Thus, this issue is also answered against the petitioners.***

18. The third issue pertains to the period for the contractor to mobilise the tankers to commence the service within 15 days from the date of the agreement.

19. According to the petitioners, the said M/s.Kamalakannan Road Transport ought to have mobilized the tankers by 23.11.2024. But, they did not report the required tankers, which were 66 in number as per the tender conditions. Further, they were able to bring in only 15 tank trucks before 23.11.2024. That part, the said M/s.Kamalakannan Road Transport should use the tank trucks within the age of 7 years of manufacture with a capacity of not less than 24 KL whereas they used the tank trucks manufactured beyond 7 years

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and in many instances, they used the tank trucks having the capacity of less than 24 KL.

20. The said M/s.Kamalakannan Road Transport made it clear in their counter affidavit that even though the period was supposed to start from 23.11.2024, all of a sudden, it was preponed to 14.11.2024 due to some urgency, that therefore, they were caught off guard and that in spite of it, they stabilized and were able to meet the requirements.

21. The learned Additional Solicitor General appearing on behalf of the ONGC, by pointing out to Clause 18 of the conditions of contract, submitted that the capacity of the tankers and the number of tankers would depend upon the daily target quantity, that even otherwise, if there has been any shortage or shortcoming, it would only result in imposition of penalty or termination of contract and that it would not be a ground for invalidating the contract given in favour of the said M/s.Kamalakannan Road Transport.

22. It is seen that the requirement of minimum number of



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tankers and their capacity are more illustrative or indicative in nature and it cannot result in invalidating the contract that has already been given in favour of the said M/s.Kamalakannan Road Transport. In other words, a non performer, who is not able to meet the requirements, will ultimately lose his contract by means of termination and it cannot be questioned by persons, who participated in the tender and lost the race. ***Thus, this issue is also answered against the petitioners.***

23. The fourth issue that was raised pertains to splitting up of the contract between the MSMEs when a single person is not able to meet the 100% requirement.

24. For this purpose, it will be relevant to take note of the price evaluation criteria provided under the special conditions of contract, which stated that where the lowest bidder (L1) was not able to offer to lift 100% of the total tendered quantity, then all other acceptable bidders next in ranking would be advised to submit their confirmation to match their rates with those evaluated for the L1 bidder. The bidders, who are able to match the price with the L1 bidder, would be considered for award on the basis of their original ranking till the total



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quantity of the tender was met.

25. The above contingency would arise only when the L1 bidder was not able to fulfil the entire 100% requirement. The specific stand taken by the ONGC was that this contingency did not arise in this case. Apart from the above, there was no obligation to match between one MSME and another under Clause 1.4.1 and this contingency would arise only if the MSEs' quote price was within the price band of L1 + 15% and if the MSEs were able to bring down that price to L1 price where L1 is someone other than the MSE. Hence, an MSE must be pitted against a non MSE whereas, in the case in hand, all the participants were the MSEs.

26. Even though it was submitted on the side of the petitioners that the petitioners were not wanting to cancel the contract, but they only wanted the contract to be divided and given to all the eligible MSEs, this Court cannot accept the said submission since the contingency of splitting up the contract did not arise since L1 bidder was able to meet the 100% total tendered quantity even as per the stand taken by the ONGC.

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27. In the considered view of this Court, if, ultimately, the said M/s.Kamalakannan Road Transport was not able to meet the 100% requirement, it would once again attract penalty or termination of the contract itself. But, that cannot be a ground for interfering with the contract already awarded in favour of the said M/s.Kamalakannan Road Transport. The contract that has been awarded in favour of the said M/s.Kamalakannan Road Transport is effective from 14.11.2024. Under such circumstances, this Court must examine as to whether such contract should be interfered/terminated. To decide this issue, this Court has to necessarily consider some of the judgments of the Hon'ble Apex Court.

28. The first judgment of the Hon'ble Apex Court is in ***Jagdish Mandal Vs. State of Orissa [reported in 2006 SCC OnLine SC 1373]*** wherein the relevant portion is extracted as hereunder :

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. 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



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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, 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



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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 black-listing or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

29. It is also relevant to take note of another judgment of the Hon'ble Apex Court in ***Central Coalfields Limited Vs. SLL-SML (Joint Venture Consortium) [reported in 2016 (8) SCC 622]*** wherein the relevant portion is extracted as hereunder :

"43. Continuing in the vein of accepting the



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inherent authority of an employer to deviate from the terms and conditions of an NIT, and re-introducing the privilege-of-participation principle and the level playing field concept, this Court laid emphasis on the decision making process, particularly in respect of a commercial contract. One of the more significant cases on the subject is the three-judge decision in [Tata Cellular v. Union of India \[\(1994\) 6 SCC 651\]](#) which gave importance to the lawfulness of a decision and not its soundness. If an administrative decision, such as a deviation in the terms of the NIT is not arbitrary, irrational, unreasonable, mala fide or biased, the Courts will not judicially review the decision taken. Similarly, the Courts will not countenance interference with the decision at the behest of an unsuccessful bidder in respect of a technical or procedural violation. This was quite clearly stated by this Court (following Tata Cellular) in [Jagdish Mandal Vs. State of Orissa \[2007 \(14\) SCC 517\]](#) in the following words: (SCC p. 531, para 22)

'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



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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, 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.'

This Court then laid down the questions that



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ought to be asked in such a situation. It was said:

'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."

30. Useful reference can be made to the judgment of the Hon'ble Apex Court in ***Subodh Kumar Singh Rathour Vs. Chief Executive Officer [reported in 2024 SCC OnLine SC 1682]*** wherein the relevant portions are extracted as hereunder :

"126. The sanctity of public tenders lies in their role in upholding the principles of equal opportunity and fairness. Once a contract has come into existence through a valid tendering



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process, its termination must adhere strictly to the terms of the contract, with the executive powers to be exercised only in exceptional cases by the public authorities and that too in loathe. The courts are duty bound to zealously protect the sanctity of any tender that has been duly conducted and concluded by ensuring that the larger public interest of upholding bindingness of contracts are not sidelined by a capricious or arbitrary exercise of power by the State. It is the duty of the courts to interfere in contractual matters that have fallen prey to an arbitrary action of the authorities in the guise of technical faults, policy change or public interest etc.

127. The sanctity of contracts is a fundamental principle that underpins the stability and predictability of legal and commercial relationships. When public authorities enter into contracts, they create legitimate expectations that the State will honour its obligations. Arbitrary or unreasonable terminations undermine these expectations and erode the trust of private players from the public procurement processes and tenders. Once a contract is entered, there is a legitimate expectation, that the obligations arising from the contract will be honoured and that the rights arising from it will not be arbitrarily divested except for a breach or non-compliance of the terms



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agreed thereunder. In this regard we may make a reference to the decision of this Court in [Sivanandan C.T. v. High Court of Kerala](#) reported in (2024) 3 SCC 799 wherein it was held that a promise made by a public authority will give rise to a legitimate expectation that it will adhere to its assurances. The relevant portion reads as under: -

'18. The basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in Government dealings with individuals. It recognises that a public authority's promise or past conduct will give rise to a legitimate expectation. The doctrine is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure

xxx xxx xxx

45. The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and



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predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.'

(Emphasis supplied)

128. Cancellation of a contract deprives a person of his very valuable rights and is a very drastic step, often due to significant investments having already been made by the parties involved during the subsistence of the contract. Failure on the part of the courts to zealously protect the binding nature of a lawful and valid tender, would erode public faith in contracts and tenders. Arbitrary terminations of contract create uncertainty and unpredictability, thereby discouraging public participation in the tendering process. When private parties perceive that their contractual rights can be easily trampled by the State, they would be dissuaded from participating in public procurement processes which may have a negative impact on such other public-private partnership ventures and ultimately it is the public who would have to bear the brunt thereby frustrating the very object of public interest."

31. The Hon'ble Apex Court has consistently held that in cases

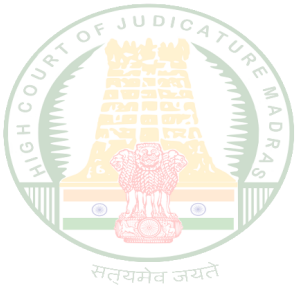


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involving commercial contracts, even when some defects are found in the decision making process, the Court must exercise its discretionary power under Article 226 of The Constitution of India with great caution and should exercise only in furtherance of public interest and not merely by making out a legal point. In the case in hand, at the best, the petitioners have raised only certain legal points, which have been sufficiently dealt with and answered by this Court.

32. It is clear from the above judgments that when it comes to cancellation of a contract already given in favour of a person, the Court must see if the process adopted or the decision made by the Authority is mala fide or is intended to favour someone or the process adopted or the decision made is so arbitrary and irrational that it would require interference. The Court must look at the overall public interest involved. Even in cases where the Court is able to find that an administrative decision suffers from deviation, it will not warrant interference until the Court finds that it is arbitrary, irrational, unreasonable, mala fide or biased. This is more so in a case where such interference is sought for at the behest of an unsuccessful bidder. The Court must also look at the larger public interest involved in the



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contract where such interference in the contract that had already been granted will result in affecting larger public interest.

33. In the case in hand, the petitioners are the unsuccessful bidders, who lost the race during the evaluation of the financial bids. One of the petitioners and her husband were L3 and L7 during the financial bid. After having participated in the tender process and accepted the tender conditions, they cannot be now allowed to turn back and question the tender document itself on the ground that the 3% reservation was not given to MSE Women.

34. This Court has already rendered its finding as to how not providing the 3% reservation will not vitiate the contract awarded in favour of the said M/s.Kamalakannan Road Transport. The other issues raised by the petitioners with respect to non furnishing of the bank guarantee within time or the said M/s.Kamalakannan Road Transport was not able to meet the requirement in certain instances or the contract was not divided among the MSEs, at best, for the sake of argument, may be construed as a deviation from the terms and conditions of the contract. However, such deviation has to be handled



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by the ONGC either by imposing penalty or by terminating the contract. That is not a ground to interfere with the contract that was already granted to the said M/s.Kamalakannan Road Transport or to cancel the contract.

35. This is in view of the fact that the decision taken by the ONGC to condone the delay/impose penalty in cases of such deviation is not found to be arbitrary, irrational, unreasonable, etc. Even otherwise, the performance rating of the said M/s.Kamalakannan Road Transport for the year 2024-25 was found to be highly satisfactory and it is evident from the contractor performance record that was furnished before this Court. ***Thus, this issue is also answered against the petitioners.***

36. On the overall conspectus, this is not a fit case where this Court must exercise its discretion under Article 226 of The Constitution of India, interfere with the grant of contract in favour of the said M/s.Kamalakannan Road Transport and cancel the same based on the grounds raised by the petitioners.



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37. In the result, the writ petitions stand dismissed. No costs.

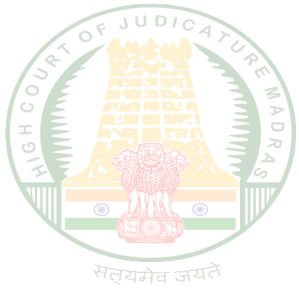
Consequently, the connected WMPs are also dismissed.

06.8.2025

To

- 1.Oil and Natural Gas Corporation
Ltd., rep.by the Deputy General
Manager - Head MM, Cauvery
Asset, Neravy Complex,
Karikal - 609604.
- 2.Oil and Natural Gas Corporation
Ltd., rep.by its Senior MMO,
Cauvery Asset, Neravy Complex,
Karikal - 609604.
- 3.The Deputy Director, Office of
the Development Commissioner,
Micro, Small, Medium Enterprises-
Public Procurement Policy,
Nirman Bhavan, New Delhi.
- 4.The Director, Ministry of
Commerce & Industry,
Department for Promotion of
Industry & Internal Trade
(Public Procurement Section),
Udyog Bhawan, New Delhi.

RS



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N.ANAND VENKATESH,J

RS

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