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WA No. 3566 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-12-2025

CORAM

THE HON'BLE MR JUSTICE R. SURESH KUMAR

AND

THE HON'BLE MR.JUSTICE SHAMIM AHMED

**W.A No. 3566 of 2025 AND
CMP Nos.29423 and 29426 OF 2025**

C.Padmambigai
Proprietor Of Dolphin Logistics, No.40/217, Second
Main Road, M.R.Nagar, Kodungaiyur, Chennai-600
118.

..Appellant

Vs

1. Oil And Natural Gas Corporation Ltd.,Rep. By
DGM- Head MM, Cauvery Asset, Neravy Complex,
Karikal-609 604.
2. Oil And Natural Gas Corporation Ltd.,Rep. By Its
Senior MMP, Cauvery Asset, Neravy Complex,
Karikal-609 604.
3. Kamalakannan Road Transport Rep. By Its
Proprietor, H-6, III Avenue, Anna Nagar,
Chennai-600 102.
4. The Deputy Director, Office Of Development
Commissioner, Micro, Small, Medium Enterprises -
Public Procurement Policy, Nirman Bhavan,
New Delhi.
5. The Director, Ministry Of Commerce And Industry,
Department For Promotion Of Industry And
Internal Trade, (Public Procurement Section)
Udyog Bhawan, New Delhi.



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..Respondents

Prayer : Writ Appeal under Clause XV of the Letters Patent to set aside the order in W.P.No.38746 of 2024 dated 06.08.2025 and consequently allow the Writ Petition in WP.No.38746 of 2024.

For Appellant : Mr.Sathish Parasaran, Senior Counsel
for Mr.Najeeb Usman Khan

For Respondents : Mr.AR.L.Sundaresan
Additional Solicitor General
assisted by Mr.Mohammed Fayaz Ali
-for RR 1 and 2

Mr.Vijay Narayan, Senior Counsel
for Mr.Thomas T.Jacob – for R3

Judgment

(Judgment of the Court was delivered by R.Suresh Kumar J.)

This intra Court appeal has been directed against the order passed by the Writ Court dated 06.08.2025 made in W.P.No.38746 of 2024.

2. In fact the impugned order was a common order passed in four writ petitions. The present one is one among the four. The issue raised before the Writ Court was that, a tender for transportation of crude oil and other allied products of the respondent Oil and Natural Gas Corporation (ONGC) was floated. The appellant / writ petitioner, her husband and the third respondent were among the applicants who applied for the said tender. There were totally 13 such applications



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and the Tender Awarding Authority viz., ONGC, awarded the tender in favour of the third respondent viz., M/s.Kamalakannan Road Transport. This awarding of the tender is mainly under challenge in the said writ petition.

3. Even before filing this writ petition, W.P.No.34553 of 2024 was filed by the very same petitioner, questioning certain conditions imposed in the tender document. Other tenderers also filed W.P.Nos.34556 of 2024 and 34559 of 2024, almost for similar relief. Therefore, all these writ petitions were heard together and disposed of by the common order dated 06.08.2025 by the Writ Court.

4. Though it is a common order passed in the said four writ petitions, the present appeal is directed against W.P.No.38746 of 2024, where, the prayer sought for by the writ petitioner / appellant was for a writ of Certiorarified Mandamus to call for the records of the award of the tender in entirety given to the respondent No.3 in Tender No.V16KC24005 vide No.KKL/CAU-ASSET/MM/2024/1364232/KKRT dated 08.11.2024 and quash the same.

5. Mainly two grounds were raised before the Writ Court and the same grounds are urged before us by Mr.Sathish Parasaran, learned Senior Counsel appearing for the appellant. The first ground is that, there has been 3% reservation for the Micro and Small Enterprises (MSEs) owned by women entrepreneurs for



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awarding such kind of tenders and here, the appellant being a women entrepreneur must have been given the benefit of 3% reservation, which they have not considered. Had it been considered, the writ petitioner / appellant being L3 would have certainly got the tender. Therefore, that was the main and prime ground raised on behalf of the appellant.

6. The other ground is that, as per the tender conditions, once the Tender Awarding Authority comes forward to award 100% capacity to a single tenderer then he must have the capacity to supply the entire 100% capacity and if there is any lacuna, either the tender can be cancelled or part of the work can be divided among the other tenderers who were L2 or L3 and even beyond that. These are the two grounds urged by the learned Senior Counsel even before the Writ Court, which were not considered, is the grievance of the appellant and therefore, urging the very same grounds, the present writ appeal has been filed.

7. We have heard Mr.Vijay Narayan, learned Senior Counsel appearing for the third respondent, who is the successful tenderer in whose favour the tender was awarded on 08.11.2024 and since then, he has been doing the work to the satisfaction of ONGC ie., the Tender Awarding Authority.



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8. We have also heard Mr.AR.L.Sundaresan, learned Additional Solicitor General appearing for the respondents 1 and 2 / Tender Awarding Authority, who would submit that, insofar as the first ie., the prime ground raised by the appellant that 3% reservation provided for the MSEs owned by women entrepreneurs, which has not been followed in the present tender is concerned, he would submit that the said reservation is not mandatory, but it is only directory. Secondly, he would submit that insofar as this 3% reservation is concerned, this reservation is provided to women entrepreneurs throughout the whole year ie., that too to eligible persons who come as L1 or L2 or L3.

9. Therefore in the present case, the single tender or solitary tender cannot be taken as the sole criteria for implementing the 3% reservation because, the said reservation is for the tenders floated by the authority for the whole year. In the present case, merely because the appellant being L3 has not been considered to award the contract, that would not amount to following the 3% reservation, which otherwise would be followed by the ONGC ie., the Tender Awarding Authority by taking into account the entire tenders issued / floated by them annually.

10. Learned Additional Solicitor General would also submit that the 3% reservation to the MSEs owned by women entrepreneurs is only directory and not mandatory. Therefore, even in respect of a case where the women entrepreneur



has not been considered for the 3% reservation in a particular tender, the Tender Awarding Authority can give reasons as to why such women entrepreneur has not been considered in a particular tender.

11. Insofar as the successful tenderer ie., the third respondent is concerned, Mr.Vijay Narayan, learned Senior Counsel appearing for them would submit that, as far as the capacity of the third respondent who is the successful tenderer is concerned, it is having the entire capacity to handle 100% work awarded to them and they have been successfully handling the same. In case there is any lacuna or discrepancy in handling of the transportation at 100% awarded to the third respondent, those discrepancies would be rectified then and there, for which a time period would be given by the Tender Awarding Authority. Even if it is not complied within a particular time, penalty also would be imposed. Therefore, there are adequate checks and balances available in the tender process itself which has been taken care by way of contract conditions at the time of awarding of the contract. Hence, the question whether the third respondent ie., the successful tenderer is having 100% capacity to handle the contract may not arise in this case, he contended.

12. We have considered all the above submissions made by the learned counsel appearing for the parties and also have perused the impugned order.



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13. Though similar grounds have been urged before the Writ Court, the learned Writ Court having considered those grounds, has given its reasoning exhaustively to state why the present appellant has not been considered for awarding the contract. The present appellant being a women entrepreneur stood as L3 and her husband stood as L7 during the financial bid. Therefore, after having participated in the tender, both the appellant and her husband were unsuccessful and they have come forward to challenge the contract awarded in favour of the third respondent, was one of the grounds taken by the learned Judge in rejecting the claim made by the appellant.

14. That apart, the learned Judge relied upon the decisions of the Hon'ble Supreme Court in ***Jagdish Mandal Vs. State of Orissa (reported in 2006 SCC Online SC 1373)***, ***Central Coalfields Limited Vs. SLL-SML (Joint Venture Consortium) [reported in 2016 (8) SCC 622]*** and ***Subodh Kumar Singh Rathour Vs. Chief Executive Officer [reported in 2024 SCC Online SC 1682]***.

15. The relevant paragraphs of those judgments also had been extracted by the learned Judge in the order impugned. Therefore, we do not want to extract the same once again in this judgment.



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16. The learned Judge having extracted the above judgments, has taken out the principle that has been analysed in those judgments, where, if the tender awarding authority has considered the merits and demerits of every tenderer, who participated in any tender process, where, without any malafide intention if the tender is awarded, the minor technical objections if are raised, would not stand in the way of judicial review to interfere with the tender awarding process made by the tender awarding authority. This principle has been mainly culled out by the learned Judge from those three judgments of the Hon'ble Supreme Court.

17. That apart, we have also found that, insofar as the 100% capacity of the third respondent who is the successful tenderer is concerned, as per the clause called 'Price Evaluation Criteria' of the Tender Documents in 'Clause 1.1: Evaluation Methodology', it has been specifically mentioned that, in case the lowest bidder (L1) is not able to offer to lift 100% of the total tendered quantity of crude oil / number of tankers as specified in the tender, then all the other acceptable bidders next in ranking will be advised to submit their confirmation through sealed envelope, to match their rates with those of evaluated L1 bidder.

18. Therefore, it is made clear that, insofar as the offer to be made to lift 100% of the total tendered quantity by the successful tenderer ie., L1 is only to the



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satisfaction of the tender awarding authority and not to be subjected to the complaint to be made by any other co-tenderer like the present appellant.

19. It is contended by the learned Additional Solicitor General appearing for the tender awarding authority before this Court that, insofar as the capacity of the third respondent ie., the successful bidder is concerned, since 08.11.2024, the date on which the contract was awarded to them is concerned, they have been successfully doing the work and their capacity of lifting 100% is also taken on account being tested by the tender awarding authority. If there is any lacuna or any discrepancy is found on their part in lifting 100% of the total tendered quantity, then and there corrective measures would be taken, where, if any additional procurement of vehicles or logistics to be made, that also would be made by giving additional time, within which if they do not make additional logistics and transport, penalty also would be imposed. This kind of checks and balances are always available not only against the third respondent, but whoever is the successful bidder in whose favour tender is awarded and the contract is given. Such mechanism would be strictly followed by the tender awarding authority.

20. Moreover, it is not the specific case of any one that any specific lacuna is there on the part of the third respondent, especially the very tender awarding authority ie., ONGC. If there has been any specific discrepancy found by the ONGC



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during the one year period ie., from 08.11.2024 till 07.11.2025 in one year contract period, certainly that could have been rectified then and there or that could have been rectified by imposing any penalty also. Such a situation since did not arise in the present case, and hence such allegation made on behalf of the appellant against the third respondent also cannot be countenanced.

21. Insofar as the 3% reservation to MSEs owned by women entrepreneurs that was mainly projected by the learned counsel for the appellant, both before the Writ Court as well as this Court is concerned, it is the submission of the learned Additional Solicitor General that 3% reservation is for the whole year ie., annually 3% reservation would be given to the women entrepreneurs and that reservation is also only directory and not mandatory.

22. Making the reservation of 3% to the women entrepreneurs is the policy decision taken by the authorities concerned being implemented by the tender awarding authority. Therefore, how such a policy has to be adopted and be implemented, is the imperative of the authority concerned, who is the master to take a decision. Therefore, the Court would have to be slow in interfering with the policy decision taken by the authorities concerned.



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23. Considering the overall aspects of this issue as we have discussed herein above, we have no reason to interfere with the reasoning given by the learned Judge. In that view of the matter, we are not inclined to entertain this writ appeal. Therefore, it is liable to be dismissed and accordingly it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K.,J.) (S.S.A.,J.)
01-12-2025

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

KST

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AND
SHAMIM AHMED J.**

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