

**03.07.2026**  
Court No. 12  
Item No. 05  
**Sandip**

IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE

**M.A.T. 919 of 2026**  
**IA No : CAN 1 of 2026**

**M/s. Lord Shiva Enterprises & Anr.**  
**-Versus-**  
**The Union of India & Ors.**

Mr. Sirsanya Bandopadhyay,  
Ms. Utsa Podder,  
Ms. Sneha Sarkar  
.....for the appellants.  
Mr. Biswanath Chatterjee,  
Ms. Sayonee Boral,  
Mr. Sobhan Kr. Poithak  
....for the respondent nos. 2 & 3.

- 1) The appeal arises out of an order dated May 14, 2026, passed in W.P.A. 11099 of 2026.
- 2) By the order impugned, the learned Court found that balance of convenience and inconvenience, did not tilt in favour of the appellants, so as to warrant an interim protection.
- 3) His Lordship was of the, prima facie, view that, in the absence of any illegality or arbitrariness in the action of the tendering authority, the interim protection sought for in the writ petition could not be granted.
- 4) The writ petition was preferred by the appellants, being aggrieved by a decision dated April 15, 2026, by which the contract of the appellants with the respondent no. 2 had been terminated on the ground that the change of names/registrations of the tank trucks had not been obtained within 120 days from the date of the receipt of the LOA by the appellants.

Further, a sum of Rs. 2 toward EMD was also forfeited.

5) The contract was entered into between the appellants and the respondent no. 2 (HPCL). The letter of acceptance was issued on August 21, 2025. The vehicles/tank truck which were involved, were not owned by the appellants. HPCL permitted the appellants to participate in the tender process, under the ATS framework. The clause provided that a person who had an agreement for sale with a truck owner, could participate in the tender process. If the bid was accepted by the tendering authority, the transfer of the vehicles ought to be effected within four months from the issuance of letter of acceptance. The appellants had time till December 19, 2025 to complete the formalities with regard to registration and transfer of the tank truck in the name of the appellants. This requirement was a part of the tender condition and had been provided under Clause 5 of the corrigendum 3. The same is quoted below:-

*“Clause 5 of the Corrigendum No. 3 published on April 4, 2025. The clause is quoted below:-*

*“In case the bidder fails to submit the required documents with change of name, etc. within 4 months of issue of LOI, suitable penal action shall be taken, which may include EMD forfeiture, caution money forfeiture, termination of order of such TTs and blacklisting of such TTs. Under no circumstances will the abovementioned timeline be extended. In such cases, the contracting Corporation reserves the right and shall be at liberty to induct TTs as per the methodology mentioned in the tender to fulfil the shortfall arising thereof.”*

6) A show cause notice was issued to the appellants on February 23, 2026. The tank truck was not put to use thereafter. When the authority did not proceed with the show cause notice, a writ petition was filed. While disposing of the writ petition, another learned single Judge directed HPCL to decide the matter on the basis of the reply filed by the appellants. At that juncture, the appellants were not protected by any interim order. Subsequently, the order of termination of the contract was passed and the writ petition was filed, the EMD was forfeited. His Lordship was of the view that, the actions of the authorities, *prima facie*, did not indicate any arbitrariness and *mala fide* intent.

7) Upon taking note of the sequence of events and the submissions made by the respective parties, His Lordship was of the view that a speaking order had been passed by the authority. The principles of natural justice were followed. Adequate opportunity was granted to the appellants to put forward their case. Thus, His Lordship held that, the question whether the termination was illegal or contrary to the terms and conditions of the contract, or whether HPCL's use of the tank truck beyond, 120 days, would amount to waiver of clause 5 of corrigendum 3, would be decided at the final hearing of the writ petition.

8) Mr. Sirsanya Bandopadhyay, learned advocate for the appellants relies on a decision of the Division Bench presided by one of us (Shampa Sarkar, J.), in support of the contention that, an interim protection should

be given to the appellants to continue with the contract, with a further direction upon HPCL to allow the tank trucks of the appellants to continue operation.

9) We are of the view that, the facts which led to the order on May 21, 2026 in MAT 878 of 2026, do not squarely apply here. In that matter, IOCL had continued to utilize the tank trucks even during the pendency of the show cause notice and the writ court also allowed the trucks to continue their operation. Thus, the Division Bench, upon balancing the convenience and inconvenience of the parties held that, the appellants therein were entitled to an interim protection for four weeks, so that the business would not suffer.

10) The Bench held that, in the event IOCL was permitted to stop utilization of the tank trucks of the appellants, IOCL would have to induct other bidders to complete the work. Whereas, if the appellants were allowed to continue the work and be granted a month's time to approach the appropriate forum for a protective order, in view of the agreed forum of an arbitral tribunal, IOCL would not suffer any loss.

11) In this case, HPCL stopped utilizing the vehicle from February 2023. Four months have elapsed since then. Directing HPCL to use the tank truck of the appellants, would amount to putting the clock back. This cannot be permitted, because HPCL must have made an interim arrangement to procure tank trucks from third parties.

12) Under such circumstances, the prayer made by Mr. Bandopadhyay that the appellants

may be allowed to continue with their business for a period of four weeks, is not accepted by us. Moreover, with regard to the prayer before the learned writ Court for stay of the termination, we are of the view that, the termination order had taken effect, and as such, the validity of the decision of the authority in terminating the contract, must be decided by the writ Court upon exchange of affidavits.

13) Time to file the opposition is extended by a period of three weeks. Reply within one week thereafter. Liberty to mention for urgent hearing of the matter.

14) Accordingly, the appeal and the connected application are disposed of.

15) The disposal of the appeal without any interference, will not prevent the appellants from raising all the questions which have been raised in this appeal. All points are left open to be decided by the writ Court.

16) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

**(Shampa Sarkar, J.)**

**(Smita Das De, J.)**