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W.P.No. 4155 & 4748 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2026

PRONOUNCED ON : 27.03.2026

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.Nos. 4155 & 4748 of 2026

&

W.M.P.Nos. 4631, 5279 & 5280 of 2026

W.P.No. 4155 of 2026

M/s. Blow Plast Industries
A registered partnership firm
Represented by its Partner,
Mr. Harsh Baid

Having its Registered Office at.
No.403, North Phase,
SIDCO Industrial Estate,
13th Street, Ambattur,
Chennai - 600 098

... Petitioner

Vs.

1.Indian Oil Corporation Limited
Represented by its Chairman,
Indian Oil Bhavan, G-9, Ali Yavar Jung Marg,
Bandra (East), Mumbai – 400 051



W.P.No. 4155 & 4748 of 2026

2.The General Manager, (Lube - Materials)
Materials & Contract Cell, Head Office,
Indian Oil Corporation Limited,
Indian Oil Bhavan, G-9, Ali Yavar Jung Marg,
Bandra (East), Mumbai - 400051

3.Ministry of Micro, Small and Medium Enterprises
Represented by its Secretary,
Union of India,
Udyog Bhawan, Rafi Marg,
New Delhi - 110011

4. Ministry of Petroleum & Natural Gas
Represented by its Secretary,
Union of India
Shastri Bhavan, Dr. Rajendra Prasad Road,
New Delhi - 110001

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue writ of certiorarified mandamus, calling for the records of the 1st respondent comprising in Tender No. MnC/LUB-40/PT-125/25-26 dated 09.01.2026, quash the same and consequently direct the 1st and 2nd respondents to undertake such procurement only in accordance with the statutory policy mandated under Section 11 of the MSMED Act and PPP-MSE Order, 2012 by treating the subject product as covered by reserved Item 209 and restricting participation / award



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exclusively to eligible Udyam registered Micro and Small Enterprises,
either by issuing a corrigendum removing offending provisions or by
issuing a fresh tender.

For Petitioner : Mr. Rahul Balaji
For Respondents : Mr. A.R.L.Sundaresan
Additional Solicitor General of
India

Assisted by
Mr. Mohammed Fayaz Ali
Standing Counsel
(R1 and R2)

Mr. U.M.Shankar
Central Government Counsel.

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Maruthi Plastics
Represented by its Proprietor
Mr. S.Krishnakumar, S/o. Late.R.Santhalingam,
Plot No.25, 2nd Street, Harbour Colony,
Kondungaiyur, Chennai-600 118.

... Petitioner

Vs.



W.P.No. 4155 & 4748 of 2026

1.The Executive Director - Lube
Marketing Head Office
Indian Oil Corporation Limited
Regd. Office: Indian oil Bhavan.
6th floor G-9, AliYavar Jung Marg,
Bandra (East), Mumbai-400051.

2.General Manager -lube Materials
Indian Oil Corporation Limited
Regd.office: Indian oil Bhavan.
6th floor G-9, AliYavar Jung Marg,
Bandra(East), Mumbai-400051.

3.Union of India,
Represented by its Secretary,
Ministry of Micro, Small and Medium Enterprises
Government of India, Udyog Bhawan,
Rafi Marg,
New Delhi - 110011.

4.Union of India,
Represented by its Secretary,
Ministry of Petroleum & Natural Gas,
Government of India,
Shastri Bhavan, Dr.Rajendra Prasad Road,
New Delhi - 110001

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus, calling for the records of the 1st respondent relating to Tender No.MnC/LUB-40/PT-125/25-26 dated 09.01.2026 quash the same and consequently direct the 1st and



2nd respondents to undertake such procurement strictly in accordance with the statutory policy mandated under 11 of the MSMED Act and the PPP-MSE Order, 2012.

For Petitioner : Mr. Rahul Balaji
For Mr. B.K.Girish Neelakantan

For Respondents : Mr. A.R.L.Sundaresan
Additional Solicitor General of
India

Assisted by
Mr. Mohammed Fayaz Ali
Standing Counsel
(R1 and R2)

Mr. U.M.Shankar
Central Government Counsel.

COMMON ORDER

Alleging that the respondent corporation is attempting to circumvent the procurement policy notified by the Ministry of Micro, Small and Medium Enterprises in exercise of the powers conferred under Section 11 of the Micro, Small and Medium Enterprises



Development Act, 2006, hereinafter called the MSMED Act, the petitioners are before this Court.

2. It would be necessary to allude to the petitioners' case as well as the defense to decide the issue on hand.

Petitioner's Case:

3. The petitioners in both the writ petitions are manufacturers manufacturing plastic products and are Udayam - registered MSME units registered under the MSMED Act. It is their contention that the respondent corporation had issued the impugned tender for setting up of an outsourced container manufacturing unit at LBP, Manali, Chennai on 09.01.2026. The tender has been deliberately structured and projected as procurement of services for in-house manufacturing. According to the petitioners an artificial classifications and an attempt to deny the applicability of statutory public procurement policy framed under Section 11 of the MSMED Act has been created by this tender.



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4. It is their case that the 1st respondent corporation is a Central Public Sector Enterprise and an instrumentality of State under Article 12 of the Constitution of India. They are bound by constitutional mandate of fairness, transparency and non-arbitrariness in public procurement. The petitioner would submit that they are existing supplier / vendor in packaging industry and have supplied products and services confirming to stringent quality, inspection, safety and delivery standards expected by oil sector institutional buyer.

5. The petitioner is aggrieved by the fact that the respondents had adopted this procurement/framework wherein they have invited non-MSE suppliers to participate in the tender. The petitioners have been manufacturing and supplying the very same subject items to the respondents and there are no allegations or adverse remarks against them. The petitioners would submit that under earlier tenders for 1 litre, 800 ml and 500 ml containers floated through the GeM Portal, they have participated and was declared as L 1 bidder and they had also



adhered to the tender specifications.

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6. They would further submit that manufacturing units like the petitioners have been manufacturing the blow - moulded HDPE containers of various sizes catering to the oil and lubricant for over 25 years. As a result these industries are substantially dependent on the procurement of oil Public Sector Undertakings / CPSEs and their constituent units for their livelihood. The petitioners and similarly placed manufacturers have invested substantially in machinery, moulds and moulding infrastructure on the legitimate expectation that they would be a sole supplier of industrial packaging item which is one of the notified item under the Procurement policy for Micro and Small Enterprises Order, 2012, herein after called the PPP – MSE Order, 2012.

7. The respondents by floating the said tender is attempting to overturn the policy which has been framed in exercise of the statutory power vested with the Central Government under Section 11 of the

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MSMED Act and notified as the PPP – MSE Order, 2012.

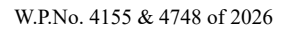
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8. The petitioners would submit that although the notification does not prohibit MSE manufacturers from participating but however the eligibility and qualification requirements clearly ensures that the MSE manufacturers are side lined. Hence the petitioners have come forward to file the above writ petitions.

Defense:

9. A counter affidavit has been filed by the respondents in WP.No.4155 of 2026, which serves as a counter affidavit in the other writ petition as well.

10. The respondents have at the outset questioned the jurisdiction of this Court to entertain the writ petition in as much as the dispute has arisen during the evaluation of the tender and as per jurisdiction clause of the tender under dispute upto the stage of LOA it is the Courts at Mumbai that have jurisdiction and dispute during execution alone is



11. The respondents would further submit that the entire writs are premised on the misconception that the tender is one for procurement. However, it is the contention of the respondents that the tender which has been floated is one for works contract which does not fall within Section 11 of the MSMED Act or the PPP – MSE Order, 2008. Therefore, on this ground also the respondents seeks to have the writ petitions dismissed.

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13. The respondents would further give reasons for the tender.

According, to them the tender has been floated in order to use the material for IOCL's captive consumption, to ensure uninterrupted and timely supply to their respective plants, to mitigate uncertainties like dependency on external factors such as transportation, better control on production and quality of materials, by providing raw materials. The IOCL polymer can be used which would be huge business opportunity to IOCL / Petrochemical Division and the revenue generated should be retained with IOCL, using free space available at the LBP, Manali, and bring value addition to the unutilised real estate. Affordability, flexibility and risk reduction to IOCL as vendor takes on ownership and maintenance cost.

14. It is their contention that all of these would go to show that the tender is not one for procurement but a works cum service contract. The allegation that the respondents were attempting to change the procurement policy is also totally misconceived since the respondents had also floated and awarded contracts for procurement of container



directly from vendors in accordance with the MSMED Act and PPP – MSME Order, 2012. The tender has been floated for works contract only with an intent of establishing inhouse manufacturing and for providing other works as enumerated therein. They would also contend that many issues with reference to quality and timely delivery have arisen in respect of the products manufactured by the MSE units.

Submissions:

15. Extensive arguments have been advanced on the side of the petitioners as well as the respondents with the main thrust of the argument on the side of the petitioner being that the respondents by reinventing the tender from a procurement contract into the works contract by introducing the setting up of the manufacturing unit and utilising the finished product has worked against the procurement policy.

16. The learned counsel for the petitioners would rely upon the Judgement reported in *2025 SCC Online SC 436 – Lifecare*



Innovations Pvt., ltd., and another Vs. Union of India and others,

wherein the Hon'ble Supreme Court has held that PPP – MSE Order, 2012 have the force of law and in the words of the Hon'ble Supreme Court “*encapsulates a mandate and discloses a specific purpose.*”

17. The learned counsel would further submit that a mere perusal of the earlier NIT and the impugned NIT would clearly indicate that the scope of work is the same and in the impugned tender the only difference is with reference to setting up of the unit within the precincts of the respondent and supply of raw material by the respondents. The learned counsel would therefore submit that the tender which is against the PPP – MSE Order, 2012 has to necessarily be set aside in so far as it allows participation of non MSE.

18. The learned Additional Solicitor General appearing for the respondents 1 and 2 would submit that a mere reading of the tender notice would clearly prove that it is not one for procurement but that it is a works contract. He would further submit that as per Clause 3 of the



PPP – MSE Order, 2012, 20% of overall procurement should from micro and small enterprises in a period of 3 years.

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19. Further, as per Clause 6 therein, in a tender where MSME enterprises quote a price within price band of L 1 + 15 %, they should also be permitted to supply a portion of the requirement by bringing down their price to L1. He would therefore submit that even the public policy only contemplates 20 % of the over all procurement to be from MSME. Clause 11 of the PPP – MSE Order, 2012, has directed the Central Government Ministries or Department or Public Sector Undertakings to continue to procure 358 items (Appendix) from micro and small enterprises and purchase should be made only from this MSME enterprises.

20. He would state that the policy has not been circumvented in any manner in as much as the tender was exclusively for a works contract.



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21. An argument had been advanced by the petitioners that to deviate from the public policy the petitioners require permission from the committee. For this, the learned Additional Solicitor General would submit that there is no deviation and it is only a different contract, namely, works contract.

22. He would submit that a mere perusal of scope of work of the above tender would clearly show that the tender is one for installing and commissioning the manufacturing unit and thereafter to produce and sell the product to the respondents. A reading of the manufacturing facility & capacity, mould & capacity, installation, commissioning & manpower for these activities would clearly show that the contract is not one for procurement. Therefore, it does not run foul of the language of Section 11 of the Act.

23. He would further submit that this is purely a policy decision of the respondents factoring the MSMED Act as well as the PPP – MSE



Order, 2012. Therefore, he would seek to have the writ petitions dismissed.

Discussion:

24. Heard the learned counsels on the either side and perused the records.

25. The issue that falls for the consideration of this Court is as follows:

(i) Whether the impugned tender is contrary to the PPP – MSE Order, 2012, in as much as the procurement of item No.209 of the annexure to the PPP – MSE Order, 2012 was sought to be eased out by manufacturing the said product through the works contract. Consequently, whether there is a violation of the provisions of Section 11 of the MSMED Act by the respondents?



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26. Before proceeding to discuss the issue on hand, it would be appropriate to first dwell into the statement of objects and reasons of the MSMED Act. The statement of the objects and reasons would show that the Act has been enacted to support the small enterprises in order to enable them to grow into medium ones, adopt better and higher levels of technology and achieve higher productivity to remain competitive in the times of fast globalisation.

27. The Act has further been introduced to facilitate the promotion, development and enhancing the competitiveness of small and medium enterprises. The Act seeks to achieve these objects:

“(a).....

(b)provide for the establishment of a National Board for Micro, Small and Medium Enterprises, a high level forum consisting of stakeholders for participative review of and making recommendations on the policies and



programmes for the development of small and medium enterprises;

(c).....

(d)empower the Central Government to notify programmes, guidelines or instructions for facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises.

(e).....

(f)empower the central and state governments to notify preference policies in respect of procurement of goods and services, produced and provided by small enterprises, by the Ministries, departments and public sector enterprises.



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(g).....

(h).....

28. In order to achieve the objects set out in (f) supra, the Central Government had included Section 11 in the Act which reads as follows:

“Section 11. Procurement preference policy.—

For facilitating promotion and development of micro and small enterprises, the Central Government or the State Government may, by order notify from time to time, preference policies in respect of procurement of goods and services, produced and provided by micro and small enterprises, by its Ministries or departments, as the case may be, or its aided institutions and public sector enterprises.”

29. For the promotion and development of micro small enterprises, the Central Government exercising its power under Section



11 of the Act, has notified the PPP – MSE Order, 2012 which has come into effect from 1st April 2012.

30. Clause 3 therein reads as follows:

“Mandatory procurement from Micro and Small Enterprises. -

(1) Every Central Ministry or Department or Public Sector Undertaking shall set an annual goal of procurement from Micro and Small Enterprises from the financial year 2012-13 onwards, with the objective of achieving an overall procurement of minimum of 20 per cent, of total annual purchases of products produced and services rendered by Micro and Small Enterprises in a period of three years.

(2) Annual goal of procurement also include sub-contracts to Micro and Small Enterprises by large enterprises and consortia of Micro and Small Enterprises formed by National Small Industries Corporation.



(3) After a period of three years i.e. from 1st April 2015, overall procurement goal of minimum of 20 per cent shall be made mandatory.

(4) The Central Ministries, Departments and Public Sector Undertakings which fail to meet the annual goal shall substantiate with reasons to the Review Committee headed by Secretary (Micro, Small and Medium Enterprises), constituted in Ministry of Micro, Small and Medium Enterprises, under this Policy.

31. Serial No.209 in the appendix attached to this policy relates to Plastic Blow Moulded Containers upto 20 litre excluding Poly Ethylene Terphthalate (PET) Containers. It is this product which is the subject matter of this writ petition.

32. By reason of this public policy which is framed in exercise of powers granted under Section 11 of the Act, the aforesaid product has to necessarily be procured from micro and small enterprises. That the



policy is mandatory has been held so by the Hon'ble Supreme Court in the Judgement in ***Lifecare Innovations Pvt. Ltd., and another Vs. Union of India and others - 2025 SCC Online SC 436***, wherein the Hon'ble Supreme Court has observed as follows:

“21.Having considered the provisions of the Act and the MSE Procurement Preference Policy, 2012, we are of the opinion that there is no mandatory minimum procurement ‘right’ of an individual MSE. However, there is certainly a statutory foundation for the Procurement Preference Policy, 2012, having force of law as it ‘encapsulates’ a mandate and discloses a specific purpose. Clause 3 of the policy mandating procurement of 25 per cent of supply from MSEs is simply the statutory duty of the bodies constituted under the Act and the Policy.”

33. Further, in paragraph No.33, the learned Judges have held as follows:

“33.However, the law as applicable for procurement



through MSEs stands on a different footing. This is for the reason that there is a statutory prescription for notifying a procurement preference policy (Section 11), and in furtherance of such a statutory prescription, the Preference Policy 2012 has been notified mandating procurement of a minimum of 25 per cent from the Micro and Small enterprises. Although it is generally permissible for the government, and its instrumentalities to provide minimum turnover criteria wherever “public safety, health, critical security equipment, etc, are involved, it must be ensured that such prescriptions do not defeat the procurement order, 2012. it is necessary to lay down clear guidelines for ministries, departments and instrumentalities. In fact, it has not been the stand of the Government that the commercial freedom to prescribe minimum turnover clauses on the one hand and the policy to promote MSEs on the other are competing interests or that they have to balance these values. The procurement order, 2012



declares the procurement preference obligations of the State and therefore statutory and executive authorities are bound to implement the same. Minimum, turnover clauses cannot undermine or override the procurement preference policy 2012.

34. The public procurement policy for micro and small enterprises 2018 has now been notified. One of the salient features of the policy is to set an annual target of 25 % procurement from the MSE Sector as against the earlier 20%. Out of which 4 % has been earmarked for MSE owned by SC / ST entrepreneurs.

35. The policy further provides where L 1 is a person other than a MSE then if a MSEs quotes price within a price band of L 1 + 15 % should be allowed to supply at least 25 % of the value of the tender quantity. 358 items reserved in the earlier policy of 2012 remains unchanged. Once again a direction is issued to the Ministry / Department / CPSUs to prepare their annual procurement plan which



has to be uploaded in their official website.

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36. The subtle issue which engages the attention of this Court is whether an item which has been reserved exclusively for procurement under the PPP – MSE Order, 2012 can be converted into works contract. An incidental issue would also arise as to whether the total procurement of a Public Sector Undertaking / Ministry from MSE includes the products earmarked in the Annexure to the Policy.

37. It is no doubt true that a works contract belongs to different genre. The Division Bench of the Bombay High Court in *Sterling and Wilson Pvt. Ltd and another Vs. Union of India – 2017 SCC Online Bom 6829*, was considering the challenge to awarding of the contract for designing, installation and service of fire fighting and detection systems. In that case relying upon the PPP – MSE Order, 2012 the tender inviting authority had allowed the 3rd respondent MSE enterprise to match the petitioner's L 1 price and consequently the tender was awarded to the 3rd respondent therein. Challenge to the above tender



was on the ground that the tender in question was not for procurement but was for works contract which did not come within the purview of the PPP – MSE Order, 2012. The product in question was not part of 358 items reserved for exclusive procurement from MSEs. Further, reliance in this case was on Clause 6 of the PPP – MSE Order, 2012.

38. The Division Bench held that the Act would not apply to the works contract. The Bench after considering the scope of the contract under the tender came to the conclusion that it was composite contract for supply of goods as well as installation of fire water spray system which is permanent fixture. The Bench went on to hold that the contract in question was not a “procurement” but only a works contract as it involved designing and installation.

39. The Bench has held as follows:

“57.As stated earlier, the MSMED Act and the Public Procurement Policy is applicable only to procurement of goods and services. The contract under



tender not being a contract for sale of goods and predominantly a work contract, the benefits of the Act and the Policy could not be extended to the MSEs registered under the Act.

58..... The respondent no.3 (L2) was allowed to match the price bid of the petitioner no.1 (L1) solely on the basis of the provision of MSMED Act and Public Procurement Policy and clause 15.5 of the tender. As stated earlier, the policy was not applicable to the contract under tender, despite which the respondent no.2 has sought to legislate a benefit to the respondent no.3 which has not been contemplated either by the policy or the Act.

40. This judgement can be distinguished from the facts of the instant case on account of two features. The first one being that the product in question did not fall within the 358 items exclusively reserved for procurement from MSEs. The second distinguishing



feature in the above referred case is that the contract involved designing and thereafter installation.

41. Admittedly, the respondent corporation have been procuring the product which is described in S.No.209 till the floating of the said contract only from the MSE enterprises. The policy and the Act makes it clear that the item No.209 can only be procured from MSEs. This procurement policy is sought to be tweaked by the respondent by deciding to float a tender under which the successful bidder gets to supply the product by installing the machinery required for producing the aforesaid product. A item exclusively reserved for MSEs is now sought to be obtained from non-MSE.

42. The respondents have changed the rules of the game by introducing a new process of procuring their containers by permitting the bidder to set up the manufacturing unit within their property and supplying raw materials. However, a reading of the scope of the contract clearly indicates that it is nothing but procurement



camouflaged as a “Works Contract”. The reason for arriving at this conclusion is for the following reasons:

(a) The unit is set up by the Tenderer and this includes reinstalling and assembling his existing unit in the precincts of the respondent.

(b) The work force is entirely that of the Tenderer.

(c) Transportation is the responsibility of the Tenderer only raw material is supplied by the respondent.

43. If every Government undertaking etc., are permitted to procure the items set out in the appendix to the PPP – MSE Order, 2012, by converting its procurement into a works contract the very object of Section 11 and the PPP – MSE Order, 2012 notified by the Government would become otiose.

44. Clause 12.2 of the PPP – MSE Order, 2012 states as follows:

“(2) This Committee shall, inter alia, review list of 358 items reserved for exclusive purchase from Micro and



Small Enterprises on a continuous basis, consider requests of the Central Ministries or Departments or Public Sector Undertakings for exemption from 20 per cent target on a case to case basis and monitor achievements under the Policy. “

This shall now be read as 25% in the light of the notification of the Public Procurement Policy for MSEs order, 2018 which has become effective from 01.04.2019.

45. A reading of the above makes it clear that there shall be a constant review of 358 items reserved for exclusive projects for micro small enterprises and the committee is given the task of considering the request of central ministries or departments or public sector undertakings for exemption of the 25 per cent target on a case to case basis and monitor achievements under the said policy. That the policy favour MSEs if further strengthened from the fact that where L 1 is a non-MSE if an MSE where to quote price within price band L1 + 15%, then the MSE should be allowed to supply 25 % of the value of the



tender at that price.

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46. A reading of the counter affidavit does not throw light on the fact as to whether the respondents would continue to procure Item 209 from MSEs or whether it is only a small percentage of the product that is sought to be converted into a works contract. A clarity in this regard has not been provided by the respondents, particularly when in paragraph No.23 of their counter they would state as follows:

“23.I submit that the present tender for inhouse manufacturing does not consume the entire procurement of the containers and the respondents have already floated and awarded contracts for procurement of the containers directly from the vendors in accordance with MSMED Act, 2006 and PPP-MSE Order 2012. Therefore, the contention of the petitioner that the respondents are completely restructuring the procurement method is incorrect as the petitioner itself continues to supply the product through an existing award of contract which is



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force until 2029. Therefore, the writ petition is totally misconceived and liable to be dismissed.”

The respondents have not set out their procurement plan which is mandatory as per the PPP-MSE Order which enjoins ministries, departments and public sector undertakings to prepare an Annual Procurement Plan for purchase and upload the same on the website. This is mandatory.

47. The respondents are referring only to the contract already awarded and does not talk about future procurement. Further, in paragraph No.9 they have set out the following reasons for turning to works contract:

(i) To use the material for IOCL's captive consumption.

(ii) Supply security and uninterrupted timely supply to our Lube Plants.

(iii) Mitigating uncertainties like dependency on external factors such as transportation.



(iv) Better control on production & quality of the materials

(v) Since providing Raw material is in IOCL's scope, IOCL polymer can be used and huge business opportunity can be given to IOCL – Petrochemicals Division and the entire revenue from RM purchase can be retained with IOCL (Raw material cost is the major component in the price of the container i.e., around 85 – 90%)

(vi) Usage of free space available at LBP, Manali and the same can bring value addition to the unutilized real estate.

(vii) Affordability, flexibility and risk reduction to IOCL as the vendor takes on ownership and maintenance costs.

This is diametrically contrary to the terms of the policy. Further, the reasons given would indicate that if the respondents find the procurement through works contract more beneficial then they would resort to the same for future needs.



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48. The Hon'ble Supreme Court in the Judgement in ***Lifecare Innovation Pvt. Ltd.***, supra had discussed the issue as to whether the 25% procurement from MSEs would be independent of the 358 items exclusively reserved for procurement from MSEs. They have discussed this in paragraph No.27 to 29 of their judgement as follows:

“27..... A holistic reading of the procurement police, incorporating clauses 3, mandating 25 percent from MSEs and clause 11 reserving 358 items for procurement from MSEs, gives us an impression that these mandates are independent of one another. The specific grievance of the petitioner is that the data supplied by the union includes even the items contemplated under clause 11. We have before us the performance and audit report conducted on the working of the review committee. In the report of the Comptroller and Auditor General of India, it was thus observed:

“d)Clause 3(4) of the Policy envisaged that the



CPSEs which fail to meet the annual procurement target from MSEs shall substantiate with reasons to the review committee headed by Secretary, Ministry of MSME. A scrutiny of the minutes of the review committee meetings revealed that none of the CPSEs which had failed to achieve the procurement targets had furnished reasons to the review committee.

28. We are of the opinion that the Review Committee, specifically entrusted with this duty, should resolve this issue. Under sub-clause (2) of clause 12, the review committee is specifically entrusted with the twin duties of (I) reviewing the 358 items exclusively reserved for MSEs and (ii) considering the request of the ministries, departments and public sector undertakings for exemption from 25% on a case-to-case basis. The Review Committee also has the obligation to “monitor the achievements of the policy”. As the review committee is entrusted with reviewing and monitoring the performance of the sector, we



are of the opinion that this body, comprising domain experts, must examine this issue, taken an appropriate decision and ensure its implementation.

29. In view of the above, we direct the respondents, in particular the review committee constituted under clause 12 of the Procurement Preference Policy 2012, to examine this issue of mandatory procurement of 25 percent of goods and services by the Government, its departments and instrumentalities from the MSEs under clause 3 of the Policy and notify whether the said procurement would be independent of the 358 items reserved for procuring from MSEs and take such action as is necessary for compliance of the Procurement Order, 2012 and upload its decision for the purpose of clause 5 of the Policy. The necessary action shall be taken within 60 days from out order.

It is not clear if the review committee has complied with this direction.



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49. No doubt the Courts cannot sit in Judgement of economic decisions taken by the Government / Public Sector Company. However, in the case on hand the Government has floated a policy whereby a particular product is mandatorily required to be purchased from an MSE. That being the policy, by inventing procurement through a works contract, the policy of the Government is sought to be set at naught. From a conjoint reading of Section 11 and the PPP – Order it is clear that Item 209 viz; the product, is exclusively reserved to be supplied by an MSE. It is the product that is reserved and not the manner in which the product is supplied i.e., as a finished product or as contemplated in the Tender in question.

50. In the judgement reported in **2002 (2) SCC 333 – Balco Employees Union (Regd) Vs. Union of India and others**, the Hon'ble Supreme Court had stated as follows:

“92.In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a



change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se interfered with by the Court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution.

51. In the case of ***Jagadish Mandal Vs. State of Orissa and others – 2007 (14) SCC 517***, the Hon’ble Supreme Court had observed as follows:

“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 tendered, is made out.

52. However, in the case on hand from the discussions supra it is clear how the present attempt is contrary to the mandate of Section 11 of the Act and the PPP – MSE Order, 2012 and consequently a violation of the provisions of Section 11 of the Act. Further, there is also an apprehension that this could be replicated for the rest of the



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items reserved exclusively for procurement from MSEs.

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53. There appears to be an element of malafides, arbitrariness and attempt to circumvent public policy framed by the parliament.

54. Therefore, the writ petitions are allowed and the 1st and 2nd respondents are directed to not extend the tender in question to non-MSEs and follow the procurement policy which is mandated under the PPP – MSE Order, 2012 as amended by the Public Procurement Policy for MSEs Order 2018. Consequently, the connected miscellaneous petitions are closed. No costs.

27.03.2026

Index : Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No

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To

1. Indian Oil Corporation Limited
Represented by its Chairman,
Indian Oil Bhavan, G-9, Ali Yavar Jung Marg,
Bandra (East), Mumbai – 400 051
2. The General Manager, (Lube - Materials)
Materials & Contract Cell, Head Office,
Indian Oil Corporation Limited,
Indian Oil Bhavan, G-9, Ali Yavar Jung Marg,
Bandra (East), Mumbai - 400051
3. Ministry of Micro, Small and Medium Enterprises
Represented by its Secretary,
Union of India,
Udyog Bhawan, Rafi Marg,
New Delhi - 110011
4. Ministry of Petroleum & Natural Gas
Represented by its Secretary,
Union of India
Shastri Bhavan, Dr. Rajendra Prasad Road,
New Delhi - 110001



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