

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.13481 OF 2023

Between:

M/s. S.K. Enterprises and Traders,
Rep. by its Partner P. Kranthi Kumar

... Petitioner

And

The Union of India, Rep. by its
Secretary Ministry of Petroleum and
Natural Gas, New Delhi & others

... Respondents

JUDGMENT PRONOUNCED ON: 03.10.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

MRS JUSTICE SUREPALLI NANDA

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

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< Gist:

> Head Note:

! Counsel for the Petitioner : Mr.V.R.Machavaram

^ Counsel for Respondents : Mr.Dominic Fernandes,
Learned counsel for R2 to R4
Mr. Gadi Praveen Kumar,
Learned Deputy Solicitor
General of India for R1.

? Cases Referred:

- (1) **(2020) 16 SCC 489**
- (2) **(2022) 1 SCC 165**
- (3) **(2007) 14 SCC 517**

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 13481 of 2023****ORDER:**

Heard the learned counsel V.R. Machavaram on behalf of the Petitioner and the learned Standing Counsel Mr. Dominic Fernandes on behalf of Respondents No.2 to 4 and learned Deputy Solicitor General of India on behalf of the 1st Respondent.

2. This Writ Petition is filed praying to issue a Writ of Mandamus declaring the action of the respondent Nos. 2 to 4 herein, more particularly action of 3rd respondent cancellation of Letter of Acceptance (L.O.A) TAPSO/OPS/POL/CTO/PT-04/22-23/LOA-15 dated 05.12.2022 communicated through email dated 16.05.2023 by respondent No.3 in respect of Tender No.TAPSO/OPS/POL/CTO/PT-04/22-23 for placing tank trucks for transportation of bulk Petroleum Products, for non-submission of PESO certification within the stipulated period as illegal, arbitrary and in violation of Article 14, 19, 21 of the Constitution of India and consequently set aside the cancellation of Letter of Acceptance (L.O.A) TAPSO/OPS/POL/CTO/PT-04/22-23/LOA-15 dated 05.12.2022

communicated through email dated 16.05.2023 by the respondent No.3 in respect of Tender No.TAPSO/OPS/POL/CTO/PT-04/22-23 and direct the respondents to accept the tank trucks placed by the petitioner pursuant to the Letter of Acceptance TAPSO/OPS/POL/CTO/PT-04/22-23/LOA -15.

3. The case of the Petitioner as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present writ petition, in brief, is as follows:

a) The petitioner is the registered partnership firm having three partners and the petitioner is one of the partners. Having across the tender notification Tender No. TAPSO/OPS/POL/CTO/PT-04/22-23 of the 2nd respondent corporation which is a Central Government Undertaking for Transportation of Bulk Petroleum Products i.e. MS and High-speed Diesel and branded fuel by Road through specially designed Lorry Tankers in Andhra Pradesh through e-tender under Two bid system from Tank Truck owners for the award of contracts for transportation of bulk Petroleum Products

with bottom loaded type tank trucks for a period of 3 years with an option for extension up to 2 years titled as TENDER FOR ROAD TRANSPORTATION OF BULK PETROLEUM PRODUCTS BY BOTTOM LOADING TANK TRUCKS -MS/HIGH SPEED DIESEL/BRANDED FUEL from Ex. Terminal Chittoor vide Tender No. TAPSO/OPS/POL/CTO/PT-04/22-23 and the Due Date and Time: 30.08.2022 at 10.00 Hrs where the tender contract to be executed.

b) The petitioner has submitted tender bid under SC/ST category for 08 vehicles vide acknowledgement dated 29.08.2022. As per tender conditions the petitioner firm is having facility of submission of booking slip at the time of submission of bid and later the petitioner was supposed to file purchase invoice of category of vehicles if the firm is successful in the tender. As such the petitioner has availed such facility and submitted Eicher Truck vehicle book slips for 8 vehicles by paying an amount of Rs. 5,000/- on payment of Rs.50,000 /- as EMD amount.

c) Thereafter, the 3rd respondent issued Letter of Acceptance (L.O.A)TAPSO/OPS/POL/CTO/PT-04/22-23/LOA -

15 on 05.12.2022 for 03 vehicles in the capacity cluster of 18-40KL having satisfied with all the criteria met with by the petitioner as laid down by the respondent corporation in its tender document. After receiving the LOA and finding the financier etc., the petitioner has submitted purchase invoice Dated 05.01.2023 for the said vehicles on 05.01.2023 as a proof of booking the vehicles with chassis which is specially meant for the business of transportation of petroleum products.

d) Unless the tender is accepted and LOA is given, the petitioner cannot book the vehicles from the transport truck makers/manufacturers and hence, the petitioner has placed booking only on 05.01.2023 and the tank trucks fabrication was started on 06.01.2023 for required body building to the vehicles and registration of the vehicles was done on 26.01.2023 and the said vehicles calibration work which is to be undertaken jointly by the Deptment of Weights and Measures and respondent Corporation and same was completed on 04.03.2023. The process of procuring Explosives department's license was initiated on 03.03.2023 and Explosives department has accepted for issuance of

license on 06.03.2023 and subsequently they issued required certificates on 06.04.2023 and 11.04.2023 as such the entire process of obtaining Petroleum Explosives Safety Organization (PESO) certification was completed on 6.4.2023 and 11.4.2023. Thereafter, the Petitioner has submitted the said PESO certification to 3rd respondent on the same day and sought for absorption of the vehicles into the fleet of the respondent as per the LOA.

e) Thereafter, the petitioner has approached Truck Manufacturer of EICHER Vehicles having shown room at M/s VVC Motors, Auto Nagar Hyderabad. The petitioner then approached a banker namely M/s HDFC Bank, Banjara Hills, Hyderabad to avail vehicle loan facility for a specific category of vehicles and loan amount of Rs.2.00 Crores was sanctioned and they have made correspondence with vehicle show room and made all arrangements to get the Letter of acceptance (LOA) from 3rd respondent corporation, being successful in tender to enable the tanker trucks of the petitioner for the Transportation of Bulk Petroleum Products.

f) As per the conditions of tender the Petitioner firm has done everything needed on its part for absorption of the vehicles along with certifications from the various agencies and as such the firm has applied for said certifications from agencies but the said agencies have delayed in issuing certifications in time. Consequently, the petitioner firm could not complete submission of the required documents and has appraised the developments to the respondent corporation vide representation dated 08.05.2023 for taking steps for the absorption of the tanker trucks as per the LOA but the respondents No.3 to 4 rejected the request vide the impugned email communication dated 16.05.2023 citing non-submission of certificates by PESO in 90 Days from the Date of Letter of acceptance (LOA) dated 05.12.2022 as per tender condition of the tender notification, causing irreparable loss to the petitioner even though such delay cannot be attributed to the petitioner firm.

g) Thereafter, the 3rd respondent arbitrarily cancelled the LOA without visualizing the consequences that the vehicles which are now sought to be placed cannot be used for any other purpose as they are specially designed vehicles for

transportation of petroleum products only. Despite the petitioner's submission of the vehicles to the 3rd respondent on 11.04.2023 by completing all the necessary legal formalities and regulatory mandatory certificates, the 3rd respondent could not absorb the petitioner's vehicles in to its fleet and without any reason, for about one month and finally cancelled the petitioner's LOA that too after submitting the representation dated 08.05.2023 knowing fully well that there was no delay on the part of the petitioner in submitting the vehicles for the certifications from the authorities of PESO and explosives department. Aggrieved by the action of 3rd Respondent in cancelling the LOA, the present Writ Petition is filed.

4. Counter Affidavit filed by the Respondent Nos. 2 to 4 as under:

a) As per the timelines given in page 8 of the Tender Document Ref: TAPSO/OPS/POL/CTO/PTO4/ 22-23, Point No. 5: SC/ST tenderers participating with booking slips are required to produce Purchase Invoice of TT within 30 days from the date of LOA and shall produce the TT for physical

inspection with all licences within 90 days from the date of LOA i.e., 06-03-2023. Clause 5 of the Tender Document is reproduced below for easy reference.

"5. SC/ST tenderers participating with booking slips are required to produce Purchase Invoice of IT within 30 days from the date of LOA and shall produce the TT for physical inspection within 90 days from the date of LOA."

b) The petitioner firm has not adhered to the timelines and has not produced TT for physical inspection with all licences within 90 days. Accordingly, the LOA of the bidder was cancelled.

c) Furthermore, clause 9 on page 32 of the Tender Document reads as below:

"In case the tenderer fails to produce all TTs for physical verification & does not place ready built TT for loading within 45 days from the date of LOA and TTs offered under Purchase Invoice/Booking slip within 90 days from the date of LOA, the WO issued for the TTs of the tenderer in multiple spells shall be cancelled. No payment shall be made for the work undertaken during the period and the Security Deposit shall also be forfeited."

d) Therefore, the action of the Respondents in cancelling the LOA is in accordance with law and the Tender Terms and Conditions. Hence, the Writ Petition is devoid of merits and is liable to be dismissed.

PERUSED THE RECORD :

5. The communication cancelling the Letter of Acceptance (L.O.A.) TAPSO/OPS/POL/CTO/PT-04/2022-23/LOA-15, dt. 05.12.2022 communicated through e-mail dt. 16.05.2023 by the Respondent No.3 in respect of Tender No.TAPSO/OPS/POL /CTO/PT-04/2022-23 reads as under :

"Dear Transporter,

This is to inform you that your LOA stands cancelled due to the following reason :

SK ENTERPRISES : Date of LOA 05.12.2022 – Failed to produce PESO LICENSE WITHIN 3 MONTHS."

6. Counter Affidavit filed by the Respondent Nos.2 to 4 – Para 6 & 8 read as under :

"6. It is submitted that as per the timelines given in page 8 of the Tender Document Ref:TAPSO/OPS/POL/CTO/PTO4/22-23, Point No.5: SC/ST tenders participating with booking slips are required to produce Purchase Invoice of TT within 30

days from the date of LOA and shall produce the TT for physical inspection with all licences within 90 days from the date of LOA i.e., 06-03-2023. Clause 5 of the Tender Document is reproduced below for easy reference.

"5. SC/ST tenders participating with booking slips are required to produce Purchase Invoice of TT within 30 days from the date of LOA and shall produce the TT for physical inspection within 90 days from the date of LOA."

8. It is respectfully submitted that clause 9 on page 32 of the Tender Document reads as below:

"In case the tenderer fails to produce all TTs for physical verification & does not place ready built TT for loading within 45 days from the date of LOA and TTs offered under Purchase Invoice/Booking slip within 90 days from the date of LOA, the WO issue for the TTs of the tenderer in multiple spells shall be cancelled. No payment shall be made for the work undertaken during the period and the Security Deposit shall also be forfeited."

7. Memo dt. 26.07.2023 filed on behalf of Respondent Nos.2 to 4 – Paras 1 to 6 read as under :

1. It is humbly submitted that as per clause-25 in page 29 under Tender Terms & Conditions of Tender document, In-case of rejection of bidder after issuance

of LOI for any reason, requirement will be fulfilled to meet the NIT number from the shortlisted successful bidders of the tender as per the modalities mentioned as under: If any LOI is cancelled, to make up the shortfall, additional LOI to be issued, from pending technically qualified offers received at first instance to whom LOI was not issued subject to matching L1 rates. Accordingly, to fulfill the total requirement of Tank Trucks, mails were sent to the 50 No's of pending technically qualified bidders to submit their willingness to offer the TTs submitted in the initial tender stage. It is submitted that 39 Bidders have submitted their willingness in response.

2. It is submitted that based on the confirmation received from the bidders, from among the offered Tank Trucks, allocation is done as per the raking and evaluation criteria as per the Tender Document and LOAs were awarded to those eligible bidders in SC category on 14.06.2023. It is respectfully submitted that with this the requirement of Tank Trucks is fulfilled at Chitoor Terminal. It is respectfully submitted that LOA was placed on 17 No. of successful bidders on 05.12.2022.

3. It is respectfully submitted that the following bidder's LOAs for trucks have been cancelled.

S. No.	Name of the Bidder	Bidder ID	No.of Trucks allotted	Reason for Cancellation
1	C Vanajakshi	886067	6	Bidder could not produce purchase invoice of Tank Truck in due time.

2	SK. Enterprises and Traders	886662	3	Bidder Could not produce Tank Truck with all valid licenses in due time.
3	V K Transport	886003	3	Bidder did not submit Security Deposit and Purchase invoice in due time.
4	B. Venu Gopal Naik	886201	3	Bidder could not Produce purchase invoice of Tank Truck in due time.
5	M.Raveendra Prop. Of SR Traders	886237	1	Bidder could not produce purchase invoice of Tank Truck in due time
6	M. Rama Murthy Naik	886115	1	Bidder Could not produce purchase invoice of Tank Truck in due time
7	Mariamman Transport	886272	1	Bidder Could not produce purchase invoice of Tank Truck in due time
8	M Venkata Swamy	886072	3	Bidder Could not produce invoice of Tank Truck in due time
9	Veeraswamy Satya Ratnam	886124	1	Bidder Could not produce purchase invoice of Tank Truck in due time

4. It is respectfully submitted that the following are the details of bidders who came in place of the cancelled LOAs

S.No.	Name of the Bidder	Bid ID
1	Aruna gopal Dheeraj	885871
2	Gurrala Gopal	885873
3	K P R Roadlines	886721
4	I Guruswamy	885869
5	Kanyaka Parameswari Oils Pvt.Ltd.	886807
6	G. Sudharshanamma	886170

7	J Bhaskar	886175
8	R Hemanth Kumar Naik	886483

5. It is respectfully reiterated that as per Clause – 25 in page 29 under Tender Terms & Conditions of Tender document, In-case of rejection of bidder after issuance of LOI for any reason, requirement will be fulfilled to meet the NIT number from the short-listed successful bidder of the tender as per the modalities mentioned as under: If any LOI is cancelled, to make up the shortfall, additional LOI to be issued, from pending technically qualified offers received at first instance to whom LOI was not issued subject to matching L1 rates. Accordingly, to fulfill the shortfall requirement of Tank Trucks (TTs) due to the cancellation of LOAs, approval was obtained from the competent authority to fulfill the shortfall TT requirement from the next eligible technically qualified bidders and to seek the willingness from the pending technically qualified bidders for offering the TTs.

6. It is respectfully submitted that subsequently e-mails were sent to the 50 No's of pending technically qualified bidders to submit their willingness to offer the TTs submitted in the initial tender stage. It is submitted that in response, 39 Bidders have submitted their willingness/confirmation on availability of TTs. Based on the confirmation received from the bidders, from among the offered Tank Trucks, allocation is done by Tender Consideration Committee as per the raking and

evaluation criteria of Tender Document and LOAs were placed on those eligible bidders on 14.06.2023. Thereby fulfilling the total tank trucks requirement at Chittoor Terminal.

Hence this memo."

DISCUSSION AND CONCLUSION:

DISCUSSION :

8. It is the specific case of the Petitioner that the Petitioner is the Registered Partnership Firm having three partners and in response to the tender notification Tender No.TAPSO/OPS /POL/CTO/PT-04/2022-23 of the 2nd Respondent Corporation which is a Central Government undertaking submitted tender bid under SC/ST category for 8 vehicles vide acknowledgement dated 29.08.2023, the 3rd Respondent issued Letter of Acceptance TAPSO/OPS/POL/CTO/PT-04/2022-23/LAO-15, on 05.12.2022 for three vehicles in the capacity cluster of 18-40 KL, having been satisfied with all the criteria met with by the Petitioner as laid down by the Respondent Corporation in its Tender Document. The Petitioner submitted purchase invoice dated 05.01.2023 for the said vehicles on 05.01.2023 and the Petitioner initiated

the process of procuring Explosives Department License on 03.03.2023 and the Petitioner was issued the required certificates on 06.04.2023 and 11.04.2023 thereby completing the entire process of obtaining Petroleum Explosives Safety Organization (PESO) Certification. But however, vide impugned communication through e-mail dated 16.05.2023 the Petitioner was informed that the Letter of Acceptance dated 05.12.2023 issued in favour of the Petitioner stood cancelled since the Petitioner failed to produce PESO license within 3 months. Aggrieved by the same the Petitioner approached this Court on the ground that the delay occurred due to circumstances beyond his control since the agencies had delayed in issuing certifications in time, therefore the Petitioner could not complete submissions of required documents within the time period stipulated in the tender document and vide representation dated 08.05.2023 requested the Respondent Corporation for the absorption of the tanker trucks as per the LOA, but Respondent Nos.3 and 4 rejected the request of the Petitioner vide the impugned

e-mail communication dated 16.05.2023 citing non submission of certificates by PESO within 3 months. The Petitioner contends having obtained LOA in favour of the Petitioner, the Petitioner was under legitimate expectation and having submitted the purchase invoices by obtaining loan from the Financial Institutions and having placed the vehicles with all due certifications, the impugned e-mail communication ought not have been issued to the Petitioner and the Petitioner representation dated 08.05.2023 ought to have been considered but however, the impugned communication through e-mail dated 16.05.2023 had been forwarded to the Petitioner cancelling the LOA dated 05.12.2022 issued in favour of the Petitioner herein illegally, arbitrarily and the learned Counsel for the Petitioner contends that for the aforesaid reasons the writ petition needs to be allowed as prayed for.

9. The learned Counsel appearing on behalf of the Respondent Nos. 2 to 4 places reliance in particular to paras 6 and 8 of the counter affidavit and also paras 1 to 6 of the Memo dated 26.07.2023 filed on behalf of

the Respondents No.2 to 4 and contends that the writ petition needs to be dismissed in view of the simple fact that the Petitioner failed to produce PESO license within 3 months as stipulated under the guidelines.

CONCLUSION :

10. A bare perusal of the counter affidavit filed by Respondent Nos.2 to 4 in particular paras 6 and 8 clearly indicate that the Petitioner failed to adhere to the time lines as stipulated in the tender document and had not produced TT for physical inspection with all licences within 90 days and accordingly the LOA of the bidder was cancelled as per Clause 5 and Clause 10 of the Letter of Acceptance dated 05.12.2022 issued to the Petitioner by the Indian Oil Corporation Ltd., which are extracted hereunder :

Clause 5 of the LOA reads as under :

5. SC/ST tenderers participating with booking slips are required to produce Purchase Invoice of TT within one month of date of LOA and shall produce the TT for physical inspection within 3 months from the date of LOA.

Clause 10 of the Tender Document reads as under:

10. In case the tenderer does not place the TT for loading within 15 days from the date of WO or 45 days from the date of LOA (for ready built TTs) and within 3 months from the date of LOA for TTs offered under purchase invoice/booking slip, the TTs offered by the tenderer in the tender shall be placed on holiday listing apart from forfeiture of SD.

11. On bare perusal of the contents of the Memo dated 26.07.2023 filed on behalf of the Respondents No.2 to 4 (referred to and extracted above), it is evident, that in view of the fact that the Petitioner could not produce Tank Truck with all valid licenses in due time, Petitioner's LOA for trucks had been cancelled and further that as per Clause 25 in page 29 under Tender Terms and Conditions of Tender Document, in case of rejection of bidder after issuance of LOI for any reason, requirement will be fulfilled to meet the NIT Number from the shortlisted successful bidders of the tender and the required procedure as explained in paras 1 to 6 of the Memo dt. 26.07.2023 filed by the Respondent Nos.2 to 4 had been initiated and 8 bidders had come in

place of 8 cancelled LOAs and the same led to the fulfillment of the total Tank Trucks requirement at Chittoor terminal.

12. The Learned counsel for the Petitioner brought on record two judgments on 14.09.2023 in support of Petitioner's case which are listed below :

(1) In "M.P.POWER MANAGEMENT COMPANY LIMITED JABALPUR Vs. M/S SKY POWER SOUTHEAST SOLAR INDIA PRIVATE LIMITED & OTHERS", dated 16.11.2022, Supreme Court of India in Civil Appeal No.8515-8516 of 2022 arising out of SLP (C) 4609-4610 of 2021, 2022 Live Law SC 966 and **(2)** In "SUMESH ENGINEERS PRIVATE LIMITED Vs. MADHYA GUJARAT VIJ COMPANY LIMITED" dated 06.05.2022, High Court of Gujarat at Ahamadabad R/Special Civil Application No.6533 of 2022."

This Court opines that the said judgments relied upon by the Counsel for the Petitioner do not apply to the facts of the present case in view of the simple fact that the Petitioner failed to adhere to the time lines

stipulated in the Letter of Acceptance dated 05.12.2022 issued to the Petitioner by the Indian Oil Corporation Ltd.

13. The Apex Court in Silppi Constructions Contractors vs. Union of India & Another reported in (2020) 16 SCC 489 at para 19 observed as under :

“19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of 12 2019 (6) SCALE 70 restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of [Article 12](#) of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realise their

limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer."

14. The Apex Court in *Uflex Ltd., vs. Govt. of Tamilnadu and Others* reported in (2022) 1 SCC 165 made certain observations in few relevant paragraphs which are extracted hereunder :

"Para - 27.

1. The enlarged role of the Government in economic activity and its corresponding ability to give economic 'largesse' was the bedrock of creating what is commonly called the 'tender jurisdiction'. The objective was to have greater transparency and the consequent right of an aggrieved party to invoke the jurisdiction of the High

Court under Article 226 of the Constitution of India (hereinafter referred to as the Reason: Constitution), beyond the issue of strict enforcement of contractual rights under the civil jurisdiction. However, the ground reality today is that almost no tender remains unchallenged. Unsuccessful parties or parties not even participating in the tender seek to invoke the jurisdiction of the High Court under [Article 226](#) of the Constitution. The Public Interest Litigation ('PIL') jurisdiction is also invoked towards the same objective, an aspect normally deterred by the Court because this causes proxy litigation in purely contractual matters.

4. In a sense the Wednesbury principle is imported to the concept, i.e., the decision is so arbitrary and irrational that it can never be that any responsible authority acting reasonably and in accordance with law would have reached such a decision. One other aspect which would always be kept in mind is that the public interest is not affected. In the conspectus of the aforesaid principles, it was observed in *Michigan Rubber v. State of Karnataka* as under:

23. From the above decisions, the following principles emerge:

(a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These action are amenable to the judicial review only to the

extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities:

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is *Id.* (2012) 8 SCC 216 [3] proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in

awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government."

15. The Apex Court in the judgment reported in (2007) 14 SCC 517 in Jagdish Mandal vs. State of Orissa in its judgment dt. 11.12.2006 at para 22 observed as under :

"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 "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, 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 succor to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

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

OR

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

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

16. Taking into consideration the above said facts and circumstances of the case and duly considering para 6 and 8 of the counter affidavit filed by the Respondent Nos.2 to 4 and also the contents of paras 1 to 6 of the Memo dated 26.07.2023 filed by Respondent Nos.2 to 4 and further taking into consideration the law laid down by the Apex Court in Judgements in Silppi Constructions Contractors vs. Union of India & Another reported in (2020) 16 SCC 489, Uflex Ltd., vs. Govt. of Tamilnadu and Others reported in (2022) 1 SCC 165 and judgment reported in (2007) 14 SCC 517 in Jagdish Mandal vs. State of Orissa in its judgment dated 11.12.2006, this Court opines that the Respondent Indian Oil Corporation Limited, acted within the bounds of reasonableness and has not misused its statutory powers, and in view of the fact that the process adopted by the Respondent Indian Oil Corporation Limited and the decision made, is neither *mala fide* nor intended to favour some one, this Court opines no interference by this Court is warranted at this stage, in the present writ petition.

The writ petition is accordingly dismissed since the same is devoid of merits. However, there shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stands closed.

MRS. JUSTICE SUREPALLI NANDA

Date: 03.10.2023

Note : L.R.copy to be marked.
B/o. *Yvkr*

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