

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
AT HYDERABAD
(Special Original Jurisdiction)**

FRIDAY, THE SEVENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION NO: 16559 OF 2025

Between:

M/s.Kesari Marine Service, A firm having its registered office At Sy.No.267, Fishing Harbor Jetti Kakianda, Kakinada District, AP Rep.by its Partner Sri D.Satish Kumar S/o.Late Sri D.Venkanna Aged about 48 years, R/o.23-6-30, Prendiproluvari Street Kakinada 533 0012

...PETITIONER

AND

1. The Indian Oil Corporation Limited, Rep.by its Authorised Officer Marketing Division, Telangana and Andhra Pradesh Hyderabad.
2. M/s. Kan Enterprises, Plot No.92, MVP Double Road MVP Colony, Sector-I Visakhapatnam 530017, AP
3. M/s. Gayathri Marine Services, Flat No.1-D, Shakuntala Apartments Plot No.5, Ocean View Layout Pandurangapuram, Visakhapatnam - 530003 Andhra Pradesh.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ of Mandamus or any other appropriate Writ, Order or Direction, declaring the proceedings dt.06-06-2025, No. IOCA/VZG/BARGE/KESARI of the 1st Respondent, as arbitrary, illegal, unjust, as in violation of principles of natural justice and as in violation of the orders dtd.07-05-2025 of this Hon'ble Court in W.P.No.15034/2025, set aside the same, and direct the 1st Respondent to take further steps, to entrust the work to the petitioner, as per the LOA dtd. 20-02-2025 and the work order dated 12.03.2025, issued to the petitioner, for Bunker supply of black oil and white oil, through tanker barges, to the coastal or

foreign run sea going vessels berthed at inner harbor outer harbor and outer anchorage of vizag port

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the order dtd.06-06-2025 bearing No IOCA/VZG/ BARGE/ KESARI issued by the 1st respondent pending disposal of the above writ petition

IA NO: 2 OF 2025

Between:

M/s. Kan Enterprises, a registered Partnership firm, having its Office at Plot No.92, MVP Double Road MVP Colony, Sector-I Visakhapatnam 530017, represented by its Managing Partner, Thanukula Roy Prakash, son of Thanukula Gnana Prakasham

AND

...Vacate Petitioner/ Respondent No.2

1. M/s.Kesari Marine Service, A firm having its registered office At Sy.No.267, Fishing Harbor Jetty Kakianda, Kakinada District, AP Rep by its Partner Sri D.Satish Kumar S/o.Late Sri D.Venkanna Aged about 48 years, R/o.23-6-30, Prendiproluvari Street Kakinada 533 0012

...RESPONDENTS/ WRIT PETITIONER

2. The Indian Oil Corporation Limited, Rep.by its Authorised Officer Marketing Division, Telangana and Andhra Pradesh Hyderabad.
3. M/s. Gayathri Marine Services, Flat No.1-D, Shakuntala Apartments Plot No.5, Ocean View Layout Pandurangapuram, Visakhapatnam - 530003 Andhra Pradesh.

...RESPONDENTS/RESPONDENTS

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim order passed on 01.07.2025 in W.P.No.16559 of 2025

Counsel for the Petitioner: SRI S.S. PRASAD, REPRESENTING FOR
SRI S N CHIDAMBARA SASTRY

Counsel for the Respondent No.1: SRI VEDULA SRINIVAS, DOMINIC
FERNANDES (SC FOR IOCL)

Counsel for the Respondent No.2: SRI G. VIDYA SAGAR, APPEAARING ON
BEHALF OF SRI M. AVINASH REDDY

Counsel for the Respondent No.3: SRI S.RAVI, REP FOR SRI M.P. KASHYAP

The Court made the following: ORDER

HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION No. 16559 OF 2025

ORDER:

The case of petitioner is that pursuant to the Tender Notice issued by the 1st respondent for Bunker supply of black oil and white oil through tanker barge to the coastal/foreign run sea going vessels berthed at inner harbor, outer harbor, and outer anchorage of Vizag Port. Petitioner along with others submitted tenders. The name of Petitioner's barge is CAPSTAR-1. After getting fully satisfied about Petitioner's barge, the 1st Respondent accepted the tender submitted by them. Petitioner tendered for 30% transportation of the Oil and it stood as L2 among the Tenderers, L1 being for 50% transportation. It is submitted that the 1st Respondent issued Letter of Acceptance (LOA) dated 20.02.2025, as per which, the period of contract is three years from the date of the LoA, extendable for a further period of 9 months on mutual consent, in line, with GeM conditions. It is stated Petitioner had complied with all the formalities for clearance of its berth from Kakinada Port to Vizag Port for transporting the black oil/white

oil, as per the requirement and the work orders of the 1st Respondent in accordance with the LOA.

1.1. It is stated, the 1st Respondent issued Petitioner Work Order dated 12.03.2025 for transporting white oil and black oil to coastal and foreign-run vessels stationed at Vizag Port through tanker barges (small category barges). Under the relevant Rules and Regulations governing the movement of barges, petitioner applied on 03.03.2025 for clearance of its Barge from Kakinada port; the said port delayed issuance of clearance. Thereafter, on 12.03.2025, the 1st Respondent issued work order which should be followed by due execution of the prescribed Contract and issuance of LOA. As Kakinada port was delaying clearance, petitioner re-submitted its Application on 22.03.2025. As there was no response, petitioner filed Writ Petition No. 8234 of 2025 and Kakinada Port issued clearance. By an e mail, petitioner informed the 1st Respondent that its Barge would be ready in all respects at Vizag port by 27.03.2025.

1.2. As per normal practice and procedure in vogue, the 1st Respondent has to follow up the said LOA with a written prescribed contract and issuance of LOA for transportation of

the oil, pursuant to the said work order. The 1st Respondent did not get the prescribed contract duly executed by Petitioner and no LOA was issued to petitioner. Petitioner received an e mail dated 21.03.2025 from the 1st Respondent to position the Barge within 30 days from the date of LOA i.e by 21.03.2025 failing which, the said LOA is liable for cancellation. According to petitioner, this communication is illegal and impermissible, as, by 21.03.2025, 30 days did not expire from the date of the LOA. The 1st Respondent failed to notice that February has only 28 days.

1.3. Petitioner sent e mail dated 28.03.2025 informing that its Barge arrived at Vizag port on 28.03.2025 and is ready for the procedural inspections by the 1st Respondent followed by e mail dated 29.03.2025 informing the 1st Respondent that survey of its Barge by Vizag port was completed and that VPT Harbour Craft license was also issued by the said port. Again, on 01.04.2025 at 12.58 hours, by another e mail all these aspects were communicated to the 1st Respondent requesting them to issue Letter of Intent for transportation of oil, as per the said work order given to petitioner. However, Petitioner received an e-mail dated 01.04.2025 (at 19.25 hours) from one of the

officials of the 1st Respondent stating that as per the earlier e mail dated 21.03.2025, the said LOA issued to petitioner stands cancelled, as, by 21.03.2025, they did not keep its barge ready. It referred to "Point 4 in the Tender conditions" which has no application at the stage of LOA. The 1st Respondent did not notice that February month has only 28 days and that even 30 days did not expire by 21.03.2025 from the date of LOA which is dated 20.02.2025. It failed to bear in mind that LOA was received by petitioner on 22.02.2025. In law, under the General Clauses Act the day on which any communication was received has to be excluded for computation of any period prescribed.

1.4. It is also stated, the action of the 1st Respondent in cancelling the LOA is arbitrary, illegal and is in gross violation of the principles of natural justice. Challenging the e mail dated 01-04-2025, petitioner filed Writ Petition No. 15034 of 2025 which was disposed of on 07.05.2025 observing that in view of the fact that LOA dated 20-02-2025 issued by the 1st respondent in favour of petitioner indicated the period of contract as three years from the date of LOA with a clear stipulation that the said period is extendable for a further period of nine months on mutual consent in line with GeM conditions

and the same had been cancelled unilaterally without following the principles of natural justice, this Court was of the opinion that Respondents 1 and 2 had acted hastily in dealing with the subject issue and passed the order impugned mechanically, erroneously, without application of mind *mala fide*. Hence, the 1st Respondent was directed to reconsider the impugned decision dated 01.04.2025, within four weeks from the date of the order and further directed that till then, no coercive steps shall be taken against petitioner and against its Barge.

1.5. Pursuant to the said direction, petitioner made a detailed representation dated 11-05-2025, however, the 1st respondent issued the impugned order on 06-06-2025 declining their request. Challenging the said order, this Writ Petition is filed.

2. This Court by order dated 01.07.2025, granted *status quo* existing as on date till filing the counter-affidavit and the said order was extended from time to time.

3. The 1st respondent filed counter stating that Barge of petitioner was at Kakinada Port and was required to be placed at Vizag with all Clearances and Permissions. As per the mail of petitioner dated 29-03-2025, they informed that Barge

would be ready in all aspects by 27-03-2025 whereas it was supposed to be produced for inspection within 30 days of LOA i.e. by 21-03-2025 (both days inclusive). Hence, the contention of petitioner that February has 28 days and 30 days did not expire on 21-03-2025 from the date of LOA 20-02-2025 is baseless and petitioner is again and again bringing the same into the matter. The fact mentioned in the mail of the petitioner dated 28-03-2025 that their barge has arrived at Visakhapatnam Port and berthed at GREEN CHANNEL berth on 28-03-2025, therefore the constant repetition by the petitioner that February has 28 days has no significance since 28-03-2025 is well beyond 30 days. Looked from any angle, petitioner could not produce the barge for inspection within 30 days. It was also mentioned that the licenses applied/submitted by paying all necessary fees and documents required for them on 12-03-2025 and it is still under process. Only on 29-03-2025 afternoon, petitioner had informed that survey by Visakhapatnam port is completed and VPT Harbour craft license is received. LOA clearly states that "All tender documents including NIT, offer, special terms and conditions of contract, specifications, general description of works and relevant drawings, subsequent

negotiations and all other correspondences connected with the above referred tender including this letter shall form part of the Work Order/Contract". Hence the contention of the petitioner that point-4 in the tender conditions is not applicable at the stage of the LOA is wrong and mis-understood.

3.1. It is stated, the contract would commence after work is undertaken complying with the conditions of LOA in accordance with tender terms and conditions. The Work Order was issued only to acknowledge the Security Deposit submitted, but the contract is deemed to commence only after inspection of Barge which is ready in all aspects. Barge was supposed to be produced for inspection ready in all aspects within 30 days of issuance of LOA which petitioner could not do. Hence, LOA was cancelled. It is also stated, based on the direction in Writ Petition No. 15034 of 2025, opportunity of personal hearing was provided to petitioner on 29-05-2025 and speaking order was passed by the competent authority on 06-06-2025.

3.2. It is stated, the entire tendering process is done in a transparent manner within the set terms & conditions. Moreover, the fact that petitioner selection for placement of LOA was based on the higher annual turnover criteria and hence

contrary to their own statement of being a small contractor. For all the aforesaid reasons, this respondent prays that Writ Petition may be dismissed.

4. The 2nd respondent filed the counter stating that Writ Petition is not maintainable as the issues raised are contractual disputes involving disputed questions of facts, which cannot be decided in a Writ Petition under Article 226 of the Constitution of India and the parties be relegated to the Civil Courts of competent jurisdiction to seek appropriate reliefs.

4.1. It is stated, the 2nd Respondent is a Registered Partnership firm constituted for the purpose of bunker transportation and its allied activities and has been established in 1997 and since then has been serving all its industrial customers with quality service in the field of Marine/Industrial lubricants market operating and gained immense expertise and experience in supplying and trading of servo industrial trade lubricants. The 1st respondent issued tender notification and one day before the last date of submission of bids (thereafter the last date was extended to January, 2025), the 1st Respondent had issued a Corrigendum dated 26.12.2024 stating that in case of tie at L-1 position, GeM shall select the successful L1

bidder through 'system determined vendor selection'. It was also added that in case of tie at other than L-1 position, Bidder with the highest turnover in any of the last three years as submitted against turnover criteria shall be considered for selection of L-2 and L-3 bidders. In exceptional cases, where turnover is also the same, the bid submitted earlier in the Portal in terms of both date and time, shall be considered for selection of L-2 and L-3 bidders. It is pertinent to mention that Clause No. 23 (xxiii) of the Tender Notification stated that in case of tie between two or more bidders at L-1 position, GeM Modalities shall be applicable. If the price bid of the parties is one and the same, it is meaning thereby that under the said system, randomly somebody would be selected. It is submitted that the price bids of the five technically-qualified bidders were opened on 17.02.2025 and it was found that all the five have quoted the same price for Lot-1, therefore, all of them were shown as L-1 and the tendering authority had selected Supreme Marine Services as L-1 as per GeM system selection. Be that as it may, bearing the nature of work, which requires bulk supply of Oil to be made at Visakhapatnam Port, the notification also stated that contract would also be awarded to two more persons who

are L2 and L3 in the ratio of 50 : 30 : 20, being L-1: L-2: L-3 respectively Accordingly, Petitioner was selected as L-2 and this Respondent has been selected as L-4. The 1st respondent issued LoA to Petitioner on 20.02.2025. It is relevant to mention, under Clause 14 (17)(d) of the Notice Inviting Tender (NIT), bidder is required to give an undertaking on notarized 100/- Non Judicial stamp paper that he shall position the offered barrage ready in all aspects along with required licences within 30 days of issuance of LOI/LOA at Vizag Port. Further, Clause 4 under Condition B Requirements of Barrage of Special Terms & Conditions (STC)/Special Condition of Contract (SCC) specifically states that barge should be inspected by IOC or authorized surveyors and be ready in all aspects for effecting bunker supplies within 30 days of LOI and that the LOA/LOI is liable to be cancelled in case any party fails to comply the said condition. Therefore, the said clauses goes to show that it is a mandatory requirement for the bidders in whose favour LOA has been issued that the barge shall be ready in all aspects at the Vizag port within 30 days from the date of issuance of LOA.

4.2. Though LOA was issued on 20.02.2025, Petitioner failed to berth the barge within 30 days therefrom, therefore in

terms of the Condition B clause 4 of the STC/SCC, the LOA was cancelled and the same was communicated to Petitioner vide email dated 01.04.2025. Thereafter, LOA dated 06.06.2025 was issued in favour of this Respondent for carrying out the subject work and requested to deposit security deposit as per the tender conditions. Accordingly, they paid Rs. 12,77,747 - as Bank Guarantee for the said work as per the tender conditions.

4.3. As the matter stood thus, the present Writ Petition came to be filed with frivolous grounds and vexatious claim and this Court by order dated 01.07.2025 directed to maintain status as on that day. As a result of the same, it is stated, respondents have been facing heavy pecuniary losses, therefore, it is prayed to vacate the interim order.

5. The 3rd respondent filed counter stating that petitioner (L2) was issued LOA on 20.02.2025 and worked order on 12.03.2025. It is stated, L3 was awarded to M/s KK Marine Service (20%), Letter of Acceptance (LOA) was issued on 20.02.2025 and work order issued on 12.03.2025. Both L2 and L3 have not placed their barge in Visakhapatnam Port and not obtained any 'No Objection Certificate' from Visakhapatnam Port within the stipulated time as per Tender Norms of Indian

Oil Corporation Limited. As such the 1st Respondent cancelled their work orders and further allocated the Work of 30% to L4-KAN Enterprises (Respondent No.2) and 20% to L5 Gayatri Marine Services (Respondent No.3) through Letter of Acceptance dated 06.06.2025. Subsequently, Respondent No.1 sent e mail on 07.06.2025 to Respondent No.3 to submit all necessary documents along with PBG (Performance Bank Guarantee) & Security Deposit for a total amount of Rs 8,51,131/-. Pursuant thereto, Respondent No.3 submitted all documents along with Performance Bank Guarantee & Security deposit on 17.06.2025 and offered Barge 'VASPARI' for inspection to Respondent Indian Oil Corporation Limited on 20.06.2025.

5.1. Respondent No.1 Officers inspected the barge on 23.06.2025 and Respondent No.3 has been waiting for orders and also sent an e mail on 28.06.2025 requesting for allowing them to commence the work allotted and again on 04.07.2025, apart from that, a representation was submitted on 14.07 2025 at IOCL Terminal Vizag and also a copy of the representation was sent to IOCL Hyderabad Office by post on 14.07.2025. Aggrieved by the inaction, Respondent No.3 preferred Writ Petition No. 21780 of 2025, wherein this Court by order dated

25.07.2025, disposed of the Writ Petition directing respondent authorities to consider representation dated 13.07.2025 and after giving a fair opportunity of hearing to petitioner therein, respondent shall pass appropriate orders in accordance to law, within four weeks from the date of receipt of a copy of this order and communicate the same to Petitioner therein.

5.2. It is stated, while issuing the LOA to Respondent No.3, Respondent No. 1 mentioned therein that LOA is subject to outcome of Writ Petition No.13863 of 2025 filed by M/s K.K. Marine Services, and the said Writ Petition was disposed of by order dated 30.06.2025 directing respondent authorities to consider representation dated 27.06.2025 and after giving a fair opportunity of hearing pass appropriate orders in accordance to law within four weeks from the date of receipt of a copy of Order. It is stated, Petitioner is not a party to Writ Petition No. 13863 of 2025. Petitioner who is L2 filed this Writ Petition and Respondent No.3 has been made a party in the present Writ Petition, although the Respondent No.3/L5 (20% work allottee) has been allotted the work from a separate component, which is not concerned with Petitioner, and by suppressing the facts has

got interim stay order, as a result, the Respondent No.3 is facing lots of financial hardships.

5.3. It is stated, Respondent No.3 is a successful financial and technical bidder and submitted all documents to Respondent No.1 and also furnished Performance Bank Guarantee and Security Deposit, even then, Respondent No.1 delayed permitting Respondent No.3 to start work in pursuance of LOA dt.06.06.2025. Respondent No.3 had already incurred Rs.28.00 (Twenty-Eight Lakhs) for the work, and the same has been informed to Respondent No.1 also. The work originally allotted to Petitioner (30% work) was subsequently allotted to Respondent No.2, but it was not allotted to Respondent No.3. The alleged component of work allotted to Petitioner does not pertain to Respondent No.3. Even then, Petitioner made them as a party, by suppressing the facts and got stay order. If at all, there is any grievance, it ought to be against Respondents 1 and 2 and not with the Respondent No.3.

5.4. The work component of 20% allotted to Respondent No.3 is from a separate component of work and nothing to do with the allegations of Petitioner. Except naming Gayatri Marine

Services as Respondent No.3, no specific allegations are made by Petitioner.

6. Petitioner filed reply stating that the impugned order is in violation of the orders in Writ Petition No 15034 of 2025 dated 07-05-2025. In view of this, the counter affidavit filed by the deponent of the counter affidavit, is neither proper nor permissible. The deponent has no authority to represent the 1st respondent. It is for the competent officer of the 1st respondent to depose and answer the averments made in the affidavit filed in support of the above writ petition. It is for the signatory of the impugned order to explain as to how the impugned order is in compliance with or in conformity with the order dated 07-05-2025 in Writ Petition No. 15034 of 2025. Petitioner reiterated the averments in the Writ Petition

7. Petitioner also filed reply to the counter of the 2nd respondent almost reiterating his case.

8. Heard Sri S.S. Prasad, learned Senior Counsel representing Sri S.N. Chidambara Sastry, learned counsel for petitioner, Sri Vedula Srinivas, learned Senior Counsel representing Sri Dominic Fernandes, learned Standing Counsel for Respondent No.1, Sri G. Vidya Sagar, learned Senior

Counsel appearing on behalf of Sri M. Avinash Reddy, learned counsel for the 2nd respondent and Sri S. Ravi, learned Senior Counsel for Sri M.P. Kashyap, learned counsel for Respondent No.3.

9. From a perusal of the material on record, it is evident that this is the second round of litigation. Petitioner has already approached this Court in Writ Petition No. 15034 of 2025 challenging the e mail dated 21.02.2025 at 17.00 hours and e mail dated 01.04.2025 at 19.25 hours, cancelling the LOA dated 20.02.2025 issued to them on a wrong premise that by 21.03.2025, 30 days have lapsed from the date of LOA making it liable for cancellation. This Court by order dated 07.05.2025, made the following observations in the said Writ Petition:

" This court taken into consideration the fact as borne on record that the prayer sought for by the petitioner herein in W.P.No.8234/2025 on the file of the A.P. High Court and the prayer sought for in the present writ petition i.e. W.P.No.15034/2025 on the file of the Telangana High Court being different from each other opines that the present writ petition is maintainable as per Clause 22.7 (b) of the notice inviting tender.

This Court opines that even though the date of LOA issued to the petitioner is dated 20-02-2025, fact remains that admittedly, the work order issued to the petitioner is only on 12-03-2025 and the petitioner admittedly can commence his work only after receipt of the work order from the 1st respondent and not earlier than that, and

therefore this court opines that the action of the 1st and 2nd Respondents in cancelling the work order on the ground that petitioner failed to offer the barge for inspection by IOC/IOC authorised Independent Surveyors ready in all respects for effecting bunkers supplies before the due date 21-03-2025 i.e. within 30 days from the date of LOA is not only arbitrary, whimsical, mechanical but also highly unreasonable, unfair and unjust".

c) "It is also borne on record and even admitted by the learned standing counsel appearing on behalf of the respondents that admittedly, prior to the issuance of the impugned proceedings of the 1st and 2nd respondents dtd.01-04-2025 communicated by e-mail to the petitioner informing the petitioner that its LOA dtd.20-02-2025 and the work order stands cancelled, the petitioner was not provided with an opportunity of personal hearing and admittedly, as borne on record, no specific Show Cause notice was issued to the petitioner informing the petitioner about the proposed action contemplated by the respondents 1 and 2 and further calling for explanation from the petitioner"

d) "This court opines that in view of the fact as borne on record that the LOA dtd 20-02-2025 issued by the 1st respondent in favour of the petitioner indicated the period of contract as three years from the date of the LOA with a further clear stipulation that the said period is extendable for a further period of nine months on mutual consent in line with GeM conditions and the same had been cancelled unilaterally without even providing an opportunity of personal hearing to the petitioner and without issuing a prior show cause notice intimating the petitioner about the proposed cancellation of LOA by the respondent nos. 1 and 2 and calling for explanations from the petitioner specifically referring to the grounds on which the said action was proposed, this court opines that the respondents 1 and 2 had acted hastily in dealing with the subject issue and had passed the order impugned mechanically, erroneously, without application of mind, mala fide."

13. It is submitted that with the above conclusions this Hon'ble court, "in the light of the discussion, reasoning and conclusions arrived

at paras 4 to 12" of its order disposed of the said writ petition, inter alia directing the 1st Respondent to re consider the impugned decision of the 1st and 2nd Respondents, dated 01.04.2025 communicated by email to the petitioner, informing the petitioner that its LOA dated 20.02.2025 and the work order stands cancelled, in accordance with law....."

10. Having considered the respective contentions and perused the record, it is to be noted that undisputedly LOA was issued on 20.02.2025, however, the actual work order was issued only on 12.03.2025, and when respondent-authorities cancelled the contract on the ground of delay in readying the barge by petitioner (which is supposed to be within 30 days from the date of LOA), this Court has held that work order having been issued on 12.03.2025, cancellation of contract on 21.03.2025 (i.e., within 10 days) is arbitrary, and illegal; therefore, directed the authorities to reconsider the decision. The said order has become final.

11. However, it is curious to note that respondent-authorities, after the alleged re-consideration of the earlier cancellation decision, has once again passed the impugned order upholding their previous decision of cancellation on the very same ground of delay in readying the barge within 30 days period. A perusal of the impugned order would not reveal any

other legally-tenable ground, except reiterating the very same stand of delay that has already been adjudicated and answered in the earlier Writ Petition. At the cost of repetition, this Court notes that LOA was dated 20.02.2025 and the period of calculation adopted under LOA is in “days” and not “months”, therefore, when the period of readying the barge is specified as “30 days”, calculation of 30 days commencing from 20.02.2025 would end by 22.03.2025. Therefore, even on this calculation aspect, the impugned order is liable to be set aside.

12. Further, when once this Court has adjudicated the earlier cancellation on the ground of delay as illegal and arbitrary, with a further direction to reconsider the decision, duly giving petitioner an opportunity of hearing, the action of the respondent-authority in cancelling the contract of the petitioner on the very same ground of delay is a blatant violation of the order of this Court. It is also not the case of respondent authorities that petitioner is not technically-competent and has no wherewithal to provide/ready the barge within a stipulated time. In that view of the matter, the impugned order is liable to be set aside.

13. Coming to the aspect of maintainability, learned Senior Counsel Sri G. Vidyasagar contends on behalf of the 2nd respondent that in matters of contracts / tenders, even if Courts find that there is total arbitrariness, still Courts should refrain from interfering and instead relegate the parties to seek damage and that the attempts by persons / firms such as petitioner with imaginary grievances wounded pride and business rivalry, to make mountains out of molehills of some technical / procedural violation should be resisted. Therefore, balance of convenience is in favour of the 2nd respondent. In support of his contention, learned Senior Counsel relied on the renowned judgment on the subject of the Hon'ble Supreme Court in ***N.G.Projects Limited v. Vinod Kumar Jain***¹, wherein, it has been held at para 23 as under:

“ In view of the above judgments of this Court, the writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands,

¹ (2022) 6 SCC 127

rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present day Governments are expected to work.”

14. Learned Senior Counsel Sri Vedula Srinivas appearing on behalf of the 1st respondent also relied on the judgments of the Hon’ble Supreme Court in **Jagdish Mandal v. State of Orissa**² and **Agmatel India (P) Ltd. v. Resoursys Telecom**³. He contends that 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,

² (2007) 14 SCC 517

³ (2022) 5 SCC 362

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. He also submitted that 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; ii) whether public interest is affected. According to the learned Senior Counsel, the technical evaluation or comparison by the Court is impermissible, and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional Court, that, by itself, would not be a reason for interfering with the interpretation given.

15. In the light of the above submissions, it is to be noted that though this Court does not sit in judicial review in contractual matters, for the reason that respondent-authorities requiring execution of a certain work are better equipped to

determine and prescribe the eligibility conditions and qualifications for a contractor to participate in a particular tender/contract and execute a given task under the contract. However, in case of any alleged irregularities in the tendering process itself, or in providing equal opportunity as per law with regard to participation in the tendering process, or in observing the principles of natural justice, the powers of this Court are broad and it can entertain a Writ Petition to strike down any such illegal action.

16. In this context, it is to be noted that in this Writ Petition, this Court is not sitting in determining the eligibility of petitioner *per se* to execute the work issued under the LOA; and admittedly, work order was issued to petitioner after determining his eligibility. However, the same was cancelled on the ground of delay in readying the barge for inspection (which was already adjudicated in an earlier writ petition and held to be illegal). Therefore, the action of the respondent-authority in passing the impugned Order, cancelling the contract is a mechanical exercise and the impugned Order herein was passed without application of mind and in violation of the Orders passed by this Court in Writ Petition No.15034 of 2025, wherein

it was specifically held that cancellation of contract of petitioner on the ground of delay was illegal as the 30-day period has not expired. Further, this Court has also considered the aspect that LOA was dated 20.02.2025 and the Work Order was dated 12.03.2025, and the cancellation was dated 21.03.2025, and after adjudicating the issue, held that such cancellation was illegal and therefore, the decision requires reconsideration.

17. However, interestingly, the respondent-authorities quote the very same ground of delay in readying the barge within 30 days and again passed the same order of cancellation of tender by way of the impugned order. Therefore, the impugned order is liable to be set aside. Further, the contention of learned Senior Counsel for Respondent No.2 that their client has been performing the contract consequent to cancellation of tender of petitioner, and that there are interim orders (status quo) in their favour, cannot be countenanced, for the reason that the very cancellation of contract of petitioner is illegal, and further they cannot claim equities on the basis of *status quo* orders passed by this Court.

18. Insofar as Respondent No.3 is concerned, the essential contention is that petitioner was awarded 30% of

contractual work and later Respondent No.3 was awarded 20% of work and there is no overlap between the works allotted to petitioner and Respondent No.3. This specific submission has not been disputed by petitioner.

19. This Court desires to place on record its displeasure over the manner in which Respondent – Indian Oil Corporation passed the impugned order. The Corporation being an instrumentality of the State under Article 12 of the Constitution, is bound under writ jurisdiction and to comply with the orders of this Court. It is unexpected from the Corporation to have passed the impugned proceedings again on the very same ground that has already been held as untenable in an earlier Writ Petition.

20. The Writ Petition is therefore, allowed, setting aside the impugned proceedings dated 06.06.2025. The 1st respondent is directed to take all the necessary consequential action to issue the required proceedings permitting petitioner to carry on its contractual obligations as per LOA and work order issued as expeditiously as possible, preferably within two weeks from the date of receipt of a copy of this order. No costs

21. Consequently, Miscellaneous Applications, if any shall stand closed.

SD/- AHMED ABDULLAH KHAN
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. Authorised Officer Marketing Division, The Indian Oil Corporation Limited, ,
Telangana and Andhra Pradesh Hyderabad.
2. One CC to SRI S N CHIDAMBARA SASTRY, Advocate [OPUC]
3. One CC to SRI VEDULA SRINIVAS, DOMINIC FERNANDES (SC FOR
IOCL)
4. One CC to SRI M. AVINASH REDDY, Advocate [OPUC]
5. One CC to SRI M.P. KASHYAP, Advocate [OPUC]
6. Two CD Copies

PVL
PSK

PA

HIGH COURT

DATED:07/11/2025

ORDER

WP.No.16559 of 2025



ALLOWING THE WRIT PETITION
WITHOUT COSTS

(8)

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10/12-25