

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO.218 OF 2014**

M/s. Tirumala Roadways
versus
The Indian Oil Corporation
Limited and another

...Petitioner.

..Respondents.

WITH**WRIT PETITION NO.3039 OF 2014**

M/s. Sheetal Roadlines
versus
The Indian Oil Corporation
Limited and others

...Petitioner.

..Respondents.

.....

Mr.Chaitanya Pendse i/b Mr. Rahul Arote for the Petitioner in both the Petitions.

Mr. Sunil Gangan with Mr. Jayesh Mistry for Respondent No.2 in WP/218/2014 and for Respondent Nos.1 and 2 in WP/3039/2014.

Mr. D.P. Singh for Respondent No.3 in WP/3039/2014.

.....

**CORAM : B.R. GAVAI &
A.S. GADKARI, JJ.**

17th March, 2015.

P.C. :

The Petitioner who has a contract of transport with Respondent No.2 has approached this Court being aggrieved by the order passed by Respondent No.2 thereby blacklisting the Petitioner for a period of two years from the date of the letter i.e. 29th November, 2013. Mr. Pendse, learned counsel appearing for the Petitioner submits that an order of blacklisting the Petitioner is permissible only if it is found that the Petitioner has a complicity with the charge on which the order of blacklisting is sought to be passed.

2. It is submitted that the order of blacklisting is passed on the ground that there is a pilferage of oil. It is further submitted that it has been found that it is only the driver of the vehicle who is found to have been involved in the pilferage and that there is no finding that the Petitioner has direct involvement with the said act of pilferage. A reliance is placed on Clause 6.1.3 of the guidelines for tenderers. Mr. Pendse submits that as such action of listing the Petitioner on holiday which is in the nature of blacklisting is not at all permissible.

3. The learned counsel appearing for Respondent No.2 on the contrary submits that since the Petitioner's vehicle has been involved in pilferage, the Petitioner has been rightly blacklisted.

4. The relation between the Petitioner and Respondent No.2 is purely contractual in nature. The contract which has been entered into by the Petitioner with Respondent No.2 specifically provides as to in what eventualities the action or inaction on the part of the contractor would amount to malpractice and irregularity. Undisputedly clause 6.1.3 provides for pilferage / short delivery of product. The penalties which are provided in the said clause provide for blacklisting of a transporter in case of a finding of pilferage and short delivery of product.

5. Undisputedly in the present case, it has been found that the vehicle owned by the Petitioner was found to be involved in pilferage and the product supplied at the destination point, was found to be short.

6. In the facts of the case, we are of the view that no case been made out for exercise of extra ordinary jurisdiction under Article 226 of the Constitution. Both the Petitions are rejected.

(A.S. Gadkari, J.)

(B.R. Gavai, J.)