

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.03.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. Nos.1117 & 1118 of 2015 &
M.P.Nos.1&1 & 2&2 of 2015

Ayyappa Transport
rep. By its Sole Proprietor
Mr.P.Duraivel ... Petitioner in W.P.1117/2015

Sri Vinayaga Transport
rep. By its Sole Proprietor
Mr.Emayan ... Petitioner in W.P.1118/2015

Vs.

1.The Secretary
Government of India
Department of Petroleum
Sastri Bhavan, New Delhi.

2.Chief Transport Manager (Retail), South
M/s Bharat Petroleum Corporation Limited
(Government of India Enterprises)
Southern Region,
No.1,Ranganathan Garden Off 11th Main Road
Anna Nagar (West) Chennai 600 040.

... Respondents in both W.Ps.

COMMON PRAYER : Petitions filed Under Article 226 of the Constitution of India praying to issue Writ of certiorafied mandamus to calling for the records pertaining to the impugned orders in SR.DGM.T.4 dated 31.12.2014 passed by the second respondent and quash the same and consequently direct the respondents to permit the petitioners to transport Petroleum Products with the Letters of Intent dated 17.07.2013.

For Petitioners : Mr.R.C.Paul Kanagaraj

For Respondents : Mr.S.Haja Mohideen Gisthi - R1
Central Govt Standing Counsel

Mr.M.Ravindran, Sr.Counsel-R2
for Mr.V.Anantha Natarajan

C O M M O N O R D E R

By consent of the learned counsel on either side, the writ petitions are taken up for final disposal.

2.Heard Mr.R.C.Paul Kanagaraj, learned Counsel appearing for the petitioners, Mr.S.Haja Mohideen Gisthi, learned Central Government Standing Counsel, appearing for the first respondent and Mr.M.Ravindran, learned Senior Counsel appearing for the second respondent.

3.In both these Writ Petitions, the challenge is to the orders passed by the second respondent dated 31.12.2014. Though the petitioners are different, the orders passed in both these writ petitions are identical, by which the Transport Contract granted in favour of the petitioners have been terminated and the tank trucks belonging to the petitioners, whose registration numbers mentioned in the impugned orders have been blacklisted for a period of two years in terms of clause 9(a), (b), (c) & 12(a) & (b) of the Transport Agreement and 8.2.2 and other sub clauses of Oil Industry Transport Discipline Guidelines.

4.The learned Senior Counsel appearing for the second respondent raised a preliminary objection as regards the maintainability of the Writ Petitions, stating that in terms of clause 16 of the agreements between the parties, all questions, disputes and differences arising under or in relation, to this Agreement, shall be referred to the sole arbitration of the Director (Marketing) of the Company and the petitioners have to avail the remedy provided under the Agreements. In support of such contention, reliance has been placed on the order passed by this Court in the case of KALA AGENCIES v. THE GENERAL MANAGER, INDIAN OIL CORPORATION [W.P.No.7370/2006 dt 23.07.2010].

5.The learned counsel appearing for the petitioners submitted that under normal circumstances, the petitioners would have invoked arbitration clause, but the petitioners have two valid reasons for approaching this Court by way of these Writ Petitions. It is submitted that in terms of clause 8.1 (a)(ii), all the delinquencies/offences which deal with adulteration/malpractices/irregularities/

penalties, if it is a first offence, blacklisting of all the tank trucks should not have been resorted to and this discretion was not exercised in favour of the petitioners and all the tank trucks have been blacklisted and the entire agreement has been terminated. The second contention for not resorting to arbitration is by contending that no valid reason has been stated for blacklisting of the trucks of the petitioners. It is submitted that even as per the impugned orders, only one truck of each of the petitioners was involved in illegality, therefore, it is submitted that the petitioners are justified in approaching this Court by invoking the provisions contained under Article 226 of the Constitution of India as the respondent has blacklisted all the tank trucks offered by the petitioner apart from cancelling the agreements.

6. Firstly while considering the maintainability of the Writ Petitions, it has to be pointed out that in cases where there is serious violation of principles of natural justice, decisions have been rendered holding that it will not be an absolute bar for invoking the extraordinary jurisdiction of this Court in Article 226 of the Constitution of India. However, a rider has to be added that the facts of each case have to be examined independently as to whether the alternate remedy provided under the Agreement could be bypassed. Therefore, the facts of the present cases have to be examined as to whether there were any valid reason for the petitioners to bypass the alternate remedy available under the Agreements entered between the petitioners and the respondent Corporation.

7. Admittedly, the agreements between the respondent Corporation and the petitioners are purely commercial transactions and merely because respondent Corporation is a Government of India Undertaking, that by itself will not change the character of a private contract between the petitioners and the Corporation. Therefore, the petitioners should abide by the terms and conditions of the contract/ agreements which they have entered into with the respondent Corporation. Under such circumstances, the petitioners having accepted the terms and conditions agreeing to refer to arbitration all questions, disputes and differences arising under or in relation to the agreements, have to necessarily resort to arbitration and the Writ Petitions are not maintainable.

8. The petitioners would contend that in terms of clause 8.1 (a) (ii), for the first offence, such a drastic penalty could not have been imposed. In this regard, the learned Senior counsel appearing for the second respondent referred to clause 8.2.2. of the Guidelines, which stipulates the penalties and it has been stated

that in case of the irregularities mentioned therein where the complicity of the carrier shall be deemed to be existent and the whole contract comprising of all TTs (Tank Trucks) belonging to the concerned carrier shall be terminated, security deposit forfeited and the concerned carrier and all their TTs shall be blacklisted on the industry basis. One of the irregularities pointed out under the said clause is with regard to the falls/hidden compartment, unauthorized fittings or alteration in standard fitting affecting quality and quantity.

9.The modus operandi which is said to be adopted by the petitioners have been set out in paragraph NO.7 of the counter affidavits, stating that it was found that extra nipple/fitting has been added with a T Joint from the return fuel pipe which run from the engine to the fuel tank with a controlling switch with a pipe connected underneath the helper's seat, joining the said T Joint, thus making arrangements to drain product from the main tank. Based on this, the loss of fuel have been reported by the dealers in their tanks.

10.Thus, the allegations based on which action has been taken clearly falls under the said clause which empowers the respondent Corporation to terminate all the contracts and blacklist on industry basis. Therefore, on both these grounds the case of the petitioners have to be referred to arbitration and they have to prove before the arbitrator that they are innocent. Further more, it is seen that Police complaints were given by the petitioners against the driver and helper much later, after a delay of about ten days and the copies of the same have been enclosed along with the explanations to the show cause notices.

11.The learned counsel appearing for the petitioners referred to the decision of the High Court of Kerala in the case of K.L.JINTO, v.BHARAT PERTROLEUM CORPORATION LTD., [W.P.(C).No.31321 of 2014 (M) dated 02.12.2014]. By relying on the said decision, it is submitted that the Kerala High Court directed the respondent Corporation to take a lenient view of the matter and to re-look at various provisions. Considering the facts and circumstances of the case, the Kerala High Court directed the respondent Corporation to take a lenient view of the matter. However, factually the cases on hand are entirely different and the conditions in clause 8.2.2. of the Guidelines, stipulating such penalty in certain cases, has not been considered by the Kerala High Court. Therefore, the decision relied on by the learned counsel for the petitioners is not applicable to the facts of the present case.

12.In the light of the above, this Court is of the firm view that the petitioners have not made out any grounds to justify the action of the petitioners in bypassing the remedy of arbitration available under the agreements.

13.In the result, the Writ Petitions fail and held to be not maintainable and the same are dismissed. It is open to the petitioners to resort to Arbitration as per the agreements if so advised, if such remedy is availed, the Arbitrator shall decide the matter independently on the facts placed, without being in any manner influenced by the observations made in this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

rpa

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary
Government of India
Department of Petroleum
Sastri Bhavan, New Delhi.
- 2.Chief Transport Manager (Retail), South
M/s Bharat Petroleum Corporation Limited
(Government of India Enterprises)
Southern Region,
No.1,Ranganathan Garden Off 11th Main Road
Anna Nagar (West) Chennai 600 040.

+2cc's to M/s.S.S.Rajesh, Advocate, S.R.No.14174,14175
+1cc to Mr.S.Haja Mohideen, Advocate, S.R.No.14421
+2cc's to Mr.V.Anantha Natarajan, Advocate, S.R.No.14366,14367

W.P. Nos.1117 & 1118 of 2015

GJ(CO)
CA(20/03/2015)