

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M. SUNDRESH

W.P.No.13825 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.A.J.S.Transport

Represented by its Proprietor J.Saleem,
S/o.Mr.Jamal,
No.59, Ellaiya Mudhali Street,
Korukupet,
Chennai-600 021.

... Petitioner

- Vs -

1. The General Manager,
Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Gardens,
11th Main Road,
Anna Nagar,
Chennai-600 040.

2. The Chief Transport Manager (Retail South),
Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Gardens,
11th Main Road,
Anna Nagar,
Chennai-600 040.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, calling for the records of the second respondent herein pertaining to the impugned order of termination of contract and blacklist passed against petitioner in and by order bearing No.SR.DGM.TPT.4 dated 31.03.2015 and to quash the said order.

For Petitioner	: Mr.V.Meenakshisundaram
For 1 st Respondent	: No Appearance
For 2 nd respondent	: Mr.K.Ethiraj

O R D E R

Heard the learned counsel for the petitioner as well as the learned counsel appearing for the second respondent.

2. The petitioner-Company is engaged in the business of Transport by offering trucks to the oil Companies, particularly, the respondent oil Company. The petitioner owns tank trucks bearing Reg Nos.TN 03 J 5447, TN 02 R 9130 and TN 10 E 2661 and all the said tank trucks were used for the purpose of carrying petrol and petroleum products of oil companies.

3. The Respondent Oil Corporation has invited tender bearing No:VTCL/SR/POL/BULK/TNT/2013-2015 from tank truck lorry owners for award of contract for transportation of MS/HSD SKO (White Oils) from Tondairpet installation for the period of 2 years with an option to extend the contract period of one more year. The petitioner has participated in the said tender and he was declared as a successful bidder and awarded with a contract for a period of two years, which was duly extended thereafter. The work order was issued for five numbers of tank lorries which was extended to one more Tank Truck bearing No.TN01 U 6469 on the same terms and conditions.

4. On 17.02.2015, the customer of the respondents' corporation have informed that they observed highly erratic dip levels in first and third compartments in the tank bearing No.TN 01U 6469 and on 18.02.2015, the officials of the respondents visited the premises of the customer and on due investigation it was found that there was a shortage of 942 litres. A calibration was found with separate hole hidden behind the supporting steel plate in all three compartments.

5. An explanation was sought for from the petitioner who in his reply dated 02.3.2015, has accepted the shortage delivery of 942 litres HSD and submitted that the same has happened without his knowledge and it was a handy work of the driver. Not satisfied with the the same, the impugned order is passed in pursuant to the Show Cause Notice dated 19.03.2015, blacklisting all the tank lorries of the petitioner. Challenging the same, the present Writ Petition is filed.

6. The learned counsel for the petitioner submitted that the vehicle in question was included in pursuant to adhoc contract and it has got no correlation with the original contract assigned. Even otherwise, if clause 8.2.2 is made applicable, then the particular Tank Truck alone can be blacklisted. Therefore, the impugned order cannot be sustained.

7. The learned counsel for the second respondent has submitted that there is an arbitration clause governing the parties. A perusal of the ADHOC contract issued on 21.10.2014 would go to show that it has been given on the very same terms as of the regular contract. Since the petitioner himself accepted the malpractice by attributing to the driver, the impugned order does not warrant any interference.

8. In so far as the submissions made by the learned counsel for the petitioner on the applicability of terms and conditions, the same is rejected with respect to ADHOC contract which clearly stipulates that terms and conditions for which regular contract would offer is made applicable to the subsequent one as well. Thus, the contention is rejected. However, this Court finds considerable force in other submission made under clause 8.2.2 which speaks about penalties upon detection of malpractice/irregularities and the relevant portion is extracted hereunder:

"However, if the complicity of the carrier is detected in case of occurrence of any of above malpractice / irregularity or incident of malpractice / irregularity stipulating into blacklisting of second TT of the carrier (during the tenure of the contract), the whole contract comprising of all the TTs belonging to the concerned carrier shall be terminated and the concerned carrier & their all TTs shall be black listed on industry basis."

9. Further clause 8.2.2.5 provides for the blacklisting of the Tank Truck which is extracted hereunder:

WEB COPY

Sl.No.	Type of Malpractice / Irregularity	Number of Malpractice / Irregularity			
		First	Second	Third	Fourth
8.2.2.5	Pilferage of product, TT not reaching destination. Fatal accident resulting in death at the work place, irregularities under W&M Act, Tampering with standard fittings of TT including the sealing, security locks, security locking system, calibration, VMU or its fittings / fixtures, Unauthorised removal of VIVIU, Use of VMU on other vehicles, Unauthorised use of TT for products other than the petroleum products, Entering into contract based on forged documents / false information. Entering into an agreement for the same TT with other oil companies, Not lodging FIR with the Police in case of accident, not informing / submitting accident report to the Oil Company about the accident.	TT shall be black listed on Indus try basis			

10. Thus, this Court is of the view that the order impugned can only be sustained to the extent of blacklisting the vehicle bearing Reg. No. TN01U 6467 alone which is the subject matter of ADHOC contract and not beyond that, since it is the case of the malpractice/irregularities for the first time. In such view of the matter, this Court is of the view that there is no necessity for the petitioner to go through the arbitration clause since on the face of it there is no power or authority to the respondents to blacklist all the tank lorries.

WEB COPY

11. Accordingly, this Writ Petition is allowed in part by restricting the impugned order to the vehicle viz., TN01U 6467 alone and in respect of all tank lorries, impugned order is set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

-sd/-

ASSISTANT REGISTRAR

/ TRUE COPY /

SUB-ASSISTANT REGISTRAR

arr

To

1. The General Manager,
Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Gardens,
11th Main Road,
Anna Nagar,
Chennai-600 040.

2. The Chief Transport Manager (Retail South),
Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Gardens,
11th Main Road,
Anna Nagar,
Chennai-600 040.

+1 CC to MR.K.ETHIRAJ ADVOCATE. SR.NO. 51633

+1 CC to MR.V.MEENAKSHI SUNDARAM ADVOCATE. SR.NO. 51599

WEB COPY

W.P.No.13825 of 2015
and
M.P.No.1 of 2015

CO-LRS
JD 08/10/2015