IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 11.03.2015

C.W.P.No.21882 of 2014

M/s Ravi Oil Carriers ...Petitioner

Versus

Union of India & others ...Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ashok Kumar Jindal, Advocate, for the petitioner.

Mr. Ashish Kapoor, Advocate, for respondent Nos.2 to 4.

HEMANT GUPTA, J.

Challenge in the instant writ petition is to the communication dated 29.08.2014, whereby the Tank Trucks of the Petitioner were blacklisted for a period of two years with effect from 28.08.2014 including permanent blacklisting of Tank Truck No.HR 46 C 5588 alongwith its Crew members, on Industry basis as well as the subsequent communication dated 09.09.2014, whereby a sum of Rs.2.31 crores was ordered to be recovered from the pending bills at locations; forfeiture of security deposit, as a product losses from the date of last calibration i.e. 05.03.2014 to 08.07.2014.

The petitioner, a transporter carrier engaged in the business of operating Tank Trucks, has been providing services of transportation of Petroleum/Oil/Lubricants (POL) products to the Indian Oil Corporation (for short 'the Corporation') since 2003 through various Tank Trucks owned and operated by the petitioner. The petitioner asserted that in the last 10 years, the petitioner has been performing its job of transportation with utmost honesty and to the satisfaction of the respondents. Pursuant to the tender invited by the Corporation in June-July, 2011, the petitioner was given contract for road transportation of bulk petroleum products with effect from 12.11.2011 for a period of two years with option for extension up to further one year. The scope of work in the said tender included road transportation of bulk petroleum products like MS/HSD/Branded Fuels etc. from bulk oil storage and handling location i.e. Panipat Marketing Complex at Panipat Refinery of the Corporation to the locations within the State and outside the State. The Tank Truck No.HR 46 C 5588 formed part of the list of the Tank Trucks in the work order dated 28.12.2011 issued by the respondent – Corporation. As per the said work order, all terms and conditions stipulated in the Notice inviting Tender; guidelines for tenderers; Tender terms and conditions; declarations; agreement and other documents furnished with the tender as well as related correspondence formed part of the contract. In terms of the said conditions, Industrial Transport Discipline Guidelines (for short 'the Guidelines') were also deemed to be part of the said Transport Agreement. The objective and purpose of the Guidelines is to ensure the proper execution of the above said transport agreement and to ensure that the petroleum products are transported and delivered to receiving locations in good conditions conforming to the specifications and further to ensure that a well defined system of checks exists at various stages of handling of petroleum products. The petitioner has been providing transportation services to the respondent – Corporation through its 23 Tank Trucks from December, 2011 to July, 2014 and that during the said period, the respondent

– Corporation never had any occasion to make complaint whatsoever regarding the transportation services provided by the petitioner.

It was on 19.07.2014, a show cause notice was issued to the petitioner informing the petitioner that on 08.07.2014, while checking the dip and cross-checking of calibration chart of its Tank Truck No.HR 46 C 5588, which was loaded with 20 KL Euro IV HSD and sent to Panipat Naptha Cracker, IOCL, there was doubt about the quantity of product and on enquiry, it was found that the subject Tank Truck was carrying two dip rods. It was further mentioned that crew of the Tank Truck ran away from the site, as they came to know about observed shortage and detection of forged dip rods. The petitioner was asked to file its reply to the said show cause notice. The petitioner submitted its reply on 25.07.2014 stating that the oil has been stolen from the Tank Truck by the driver and that he has nothing to do even remotely with the theft. It was further stated that due to this bad act of the driver, the petitioner has been shamed deeply and he has been broken mentally and physically. The petitioner also stated that he shall compensate the loss to the respondent – Corporation due to this theft. It is also pointed out that the petitioner has lodged an FIR against the driver of the Tank Truck on 11.08.2014. The petitioner was again served with a notice for personal hearing on 04.08.2014. The petitioner explained that the driver might have committed the theft of the oil and pleaded to show him the alleged duplicate rod recovered from the driver of the Tank Truck to substantiate the fact of alleged shortage of 5890 lts. due to theft by the driver of the Tank Truck. However, the officers of the respondent – Corporation refused to show the alleged duplicate rod. The petitioner came to know from the lower staff of the respondent – Corporation that no duplicate rod was received from the

Tank Truck. The petitioner alleged that he came to know that some high officers of the respondent – Corporation just want to terminate the contract of the petitioner in order to award the contract to their preferred carrier. It is also alleged that neither the petitioner nor its authorized representative were given notice at the time of alleged discovery of shortage of oil and recovery of two dip rods. It is alleged that the respondent – Corporation in an unreasonable manner, arbitrarily, malafidely and hastily blacklisted all the Tank Trucks of the petitioner for two years with effect from 28.08.2014. Subsequently, the respondent – Corporation passed an order for recovery of Rs.2.31 crores as alleged product losses from 05.03.2014 i.e. the date of last calibration to 08.07.2014.

On the other hand, in the reply filed on behalf of the respondent – Corporation, it is pointed out that while checking the dip and cross checking the calibration chart, there was doubt about the quantity of the product. When the dip rod was verified with the calibration chart, it was observed that there was large variation in the proof line as stamped. At that stage, the driver handed over another dip rod. It is pointed out that the driver of the Tank Truck was carrying two dip rods i.e. one was stamped by the Weights and Measuring Depot, whereas the second rod was unstamped. Therefore, a Committee was constituted, which found that the Tank Truck was having one forged dip rod; there was total oil difference of 180.6 CM from that of the calibration and that there was shortage of 5890 lts. as per calibration chart. The respondent – Corporation relied upon various Guidelines in such matter to support the order passed against the petitioner.

Before this Court, learned counsel for the petitioner has vehemently argued that the amount of Rs.2.31 crores is being claimed from the petitioner on the basis of revised Clauses 2.3.6; 8.2.2.3; 8.2.2.10 & 8.2.2.16 of the Guidelines amended w.e.f. June, 2014. It is contended that such Guidelines cannot be applied to the petitioner, as the contract was awarded in the year 2011. Therefore, the Guidelines as are applicable on the said date alone would be relevant. Learned counsel for the petitioner has further argued that in terms of Clause 8.2.2.5 of the Guidelines, only the Tank Truck can be blacklisted on Industry basis i.e. across all Oil Companies, whereas the order passed is regarding blacklisting of the Carrier i.e. the petitioner, which is not permissible under the Guidelines. It is also argued that it is an individual act of the driver of the Tank Truck, which led to shortage of the petroleum product, therefore, consequences of such act of the driver cannot fall upon the petitioner. The petitioner has also disputed that there was no second dip rod and the finding recorded by the respondent – Corporation in this respect is not borne out from the record.

On the other hand, Mr. Kapoor, learned counsel representing respondent Nos.2 to 4, relies upon an order passed by the learned Single Judge in CWP No.19042 of 2014 titled 'M/s Nanak Oil Carrier Vs. Indian Oil Corporation & another' decided on 12.09.2014, wherein in case of tampering of the security lock, all the Tank Trucks of the petitioner were blacklisted. It was held that the guidelines issued are not whimsical one, but it is to protect public property. The discipline which is sought is brought, if there is a deliberate act of tampering, then the punishment ought to be severe, commensurate with the mischief that is sought to be perpetrated. The guidelines, which incorporated a punishment of blacklisting of all the Tank Trucks accords with the gravity of the deviance, thus, it was found that the petitioner cannot be resolved of the consequences of the wrong doing. It is pointed out that though in the Letters Patent Appeal against the said order, the Division Bench has not found any ground to differ with the view taken by the learned Single Bench, but found that the questions; as to whether penal action can be resorted to as per agreed terms & conditions and whether security can also be forfeited, can be referred to sole arbitration of the Director (Marketing) of the respondent – Corporation. With the liberty to raise the dispute, the Letters Patent Appeal was dismissed.

We have heard learned Counsel for the parties and find no merit in the present petition. The Notice inviting tender has been appended by the petitioner as Annexure P-1. Some of the relevant conditions from the tender document, read as under:

Tender No.: DSO/OPS/ POL/ BULK MH/2011-12/ PANIPAT / 01 Due Date & Time: 29.07.2011 at 11.00 HRS	INDIAN OIL CORPORATION LIMITED (M.D.) TENDER FOR ROAD TRANSPORTATION OF BULK PETROLEUM PRODUCTS – MS /HSD / BRANDED FUELS	PAGE

Attachment-8

(On Non-Judicial Stamp Paper as prescribed in the respective State)

BULK PETROLEUM PRODUCTS ROAD TRANSPORT AGREEMENT

THIS AGREEMENT made ______ day of ______ 20__ between Indian Oil Corporation Limited a Company registered under Indian Companies Act, 1913/1956 having registered office at G-9, Ali Yavar Jung Marg, Bandra (E), Mumbai – 400051 hereinafter called 'THE COMPANY' (which expression unless repugnant to the context shall include its successors and assigns) of the ONE PART and M/s ____________ a Proprietorship / Partnership Firm / Private Limited / Limited Company having registered office / Place of business at ________ hereinafter called 'THE CARRIER' or Carrier (which expression shall be deemed to include legal heirs and executors of the present constituents in case of firm or official liquidator in case of Company) of the OTHER PART.

WHEREAS the Carrier is engaged in the business of operating Tank Trucks and is interested in above transportation job of the Company.

AND WHEREAS the Carrier has offered its services of transportation of POL product and the Company is agreeable to accept the same on certain terms & conditions.

Now thereof, it is agreed between the parties as follows:

xx xx

9 (a). The Carrier shall be responsible for quantity and quality of the products received by him for transportation. It shall be responsibility of the Carrier to check the quantity and quality of the products received by him at the Dispatch Storage Point before acknowledgement of the products. Acknowledgement by any member of Crew of the Tank Truck or by any other authorized person of the Carrier by way of signing on the Challan or any other Dispatch Document shall be sufficient proof of acceptance of product quantity and quality by the Carrier. The Carrier shall be responsible of the products till the products are acknowledged at the Receiving location.

(b) The Carrier shall comply with and give full cooperation to the Company in meeting the requirement of prevailing 'Marketing Discipline Guidelines' as applicable to them. The copy of the 'Marketing Discipline Guidelines' can be obtained from the Company or downloaded from IOC website and Carrier must acquaint themselves before operation.

(c) If any shortage in quantity and / or variation in quality of product is found at any stage after Tank Truck leaves the Dispatch Storage Point up to Receiving location, the Carrier shall be responsible for the same irrespective of reason and Company would be entitled to following:

(i) In case of quantity shortage of MS / HSD / Branded Fuels etc. recovery shall be made at the retail-selling price at dispatch location or receiving location, whichever is higher and transport charges for the shortage quantity.

(ii) without prejudice to any other right of Company including the right for termination of agreement as per clause 15 in case of variation in qualtity, Company at its' discretion may dispose off the contaminated product and all expenses / losses and cost of product in this connection as determined by the Company shall be recoverable from Carrier.

xx xx

18. This agreement covers entire understanding between the parties. No alteration / variation of any of the terms of this Agreement shall be valid unless made with the consent of both the parties and evidenced in writing duly signed by authorized representatives of both the parties.

xxx xxx xxx

Annexure – A

INDUSTRY TRANSPORT DISCPLINE GUIDELINES

xx xx

2.0 TRANSPORTATION

x x x

2.3 Calibration of Tank Lorry

x x x

2.3.6 Tampering with calibration of vehicle in any manner shall be construed as a malpractice and penal action will be taken against the carrier as outlined under clause No.8. Further, alleged product losses will be recovered from the carrier from the date of last calibration.

xx xx xx

8.0 ADULTERATION / MALPRACTICES / IRREGULARITIES / PENALTIES

TT caught for having indulged in adulteration / malpractices / irregularities shall be immediately suspended by the location-in-charge. However, an investigation shall be conducted as per the laid down procedure of the company. On investigation, if the adulteration / malpractice / irregularities is established then penal action stipulated as under shall be taken.

8.1 Penalties in case of adulteration:

xx xx

8.2 Penalties for malpractices / irregularities

8.2.1 Malpractices / irregularities will cover any of the following:

x x x

h. Tampering with standard fittings of TT including the sealing, security locks, security locking system, calibration, Vehicle Mounted Unit or its fittings / fixtures.

x x x

l. Irregularities under W&M Act

x x x

n. Pilferage / short delivery of product

o. Any act of the carrier / carrier's representative that may be harmful to the good name / image of the Oil Company, its' products or its services.

x x x

8.2.2 Penalties upon detection of malpractice / irregularities

The carrier shall attract penalties for the malpractice / irregularities as given below and the TT mentioned in the following instances shall be suspended / blacklisted alongwith TT crew. However, an investigation shall be conducted and if the malpractice / irregularity is established then penal actions stipulated as under shall be taken:

S.No.	TYPE OF MALPRACTICE/ IRREGULARITY	NUMBER OF MALPRACTICE / IRREGULARITY			
		First	Second	Third	Fourth
xx	xx	xx	xx	xx	xx
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 locsks, security locking system, calibration, VMU or its fittings/fixtures, Unauthorized removal of VMU, use of VMU on other vehicles, unauthorized 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 blacklisted on Industry basis			
8.2.2.6	Any act of the carrier / carrier's	As decided			

	representative that may be harmful to the good name/image of the Oil Company, its' products or its services	by the Company			

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 blacklisted on industry basis.

8.2.3 Period of blacklisting

The period for blacklisting for the carrier & TTs shall be two years. However, the company reserves the right to extend the ban on the concerned carrier / TT after the period of two years is over. Depending upon the seriousness of the offence, the carrier / TT may be banned permanently.

Annexure P-11 is the revised Oil Industry Transport Discipline Guidelines as issued in June, 2014. In the revised Guidelines, though there are some additions, but the provisions of the old Guidelines are substantially same. The only substantial difference is in the Note, which reads as under:

> "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 blacklisted on Industry basis.
>
> However, in case of the following irregularities, the complicity of the carrier shall be deemed to be existent and the whole contract comprising of all the TTs belonging to the concerned carrier shall be terminated, security deposit forfeited and the concerned carrier & their all TTs shall be blacklisted on industry basis:
>
> 1. False/hidden compartment, unauthorized fittings or alteration in standard fittings affecting Quality and Quantity.
> 2. Illegal/unauthorized duplicate keys of security locks.

3. Duplicate dip rod/calibration chart.
4. Mis-appropriation of security locking system."

As per Clause 9(a) of the agreement, it is the Carrier i.e. the petitioner, who is responsible for quantity and quality of the products received by him for transportation. It is the responsibility of the Carrier to check the quantity and quality of the products received by him at the Dispatch Storage Point before acknowledgement of the products. Even acknowledgement by any member of the Crew of the Tank Truck or by any other authorized person of the Carrier by way of signing on the Challan or any other Dispatch Document shall be sufficient proof of acceptance of product quantity and quality by the Carrier. The Carrier shall be responsible of the products till the products are acknowledged at the Receiving location. Clause 9(c) contemplates that if any shortage in quantity and / or variation in quality of product is found at any stage after Tank Truck leaves the Dispatch Storage Point upto Receiving location, the Carrier shall be responsible for the same irrespective of the reason and Company would be entitled to the recovery at the retail-selling price at dispatch location or receiving location, whichever is higher and transport charges for the shortage quantity.

As per Clause 2.3.6 of the Guidelines, tampering with calibration of vehicle in any manner shall be construed as a malpractice and penal action would be taken against the Carrier as outlined under clause No.8. The penalties, which can be imposed upon detection of malpractice / irregularities i.e. in respect of quantity, are detailed in Clause 8.2.2 of the Guidelines, which includes the blacklisting of the Tank Truck alongwith the crew and if on investigation, the malpractice is established, then penal action stipulated thereunder shall be taken. As per clause 8.2.2.5, in respect of pilferage of the product, the Tank Truck is contemplated to be blacklisted on

Industry basis. In terms of clause 8.2.2.6, if any act of the carrier / carrier's representative that may be harmful to the good name / image of the Oil Company, its products or its services, the penalty is as to be decided by the Company. The Note before Clause 8.2.3 provides that if the complicity of the Carrier is detected in case of occurrence of any of malpractice / irregularity or incident of malpractice / irregularity stipulating into blacklisting of Tank Truck of the Carrier, the whole contract comprising of all the Tank Trucks belonging to the concerned Carrier shall be terminated and the concerned Carrier & their all Tank Trucks shall be blacklisted on Industry basis.

Therefore, though as per Clause 8.2.2.5, the blacklisting is of the Tank Truck, but in terms of sub-clause (a) & (c) of Clause 9 read with Note to 8.2.2, it is the Carrier, who is responsible for delivery of the petroleum products to the destination. The petitioner cannot take shelter alleging it to be a misconduct of the driver of the Tank Truck or its crew. In terms of Clause 9(c) of the Agreement, the Carrier i.e. the petitioner, is not permitted to raise any dispute even in case of any misconduct on the part of the crew. Even otherwise, the crew consists of employees of the petitioner. All authorized and unauthorized acts of the servant are binding on the employer. The petitioner is vicariously responsible for all the misconducts of its employees. It is only the criminal offence for which employer cannot be vicariously made responsible, but in respect of all civil wrongs, the employer is wholly responsible. Therefore, even in terms of unrevised Guidelines, which are admittedly applicable to the petitioner, the penalty of blacklisting of the entire Tank Trucks of the Carrier i.e. the petitioner could be imposed and has been rightly imposed.

To say that the penalty is disproportionate to the misconduct is again not meritorious. It is difficult to say that the petitioner has diligently complied with the terms and conditions of the contract i.e. ensuring safe supply of the petroleum products. The fact that the Tank Truck had two dip rods gives an impression that it was a practice with the crew to hoodwink the Oil Company in respect of quantity of the oil carried and delivered to the destination. The fact that the crew of the petitioner has been caught stealing of petroleum product is sufficient to give inference that it can be a practice. Therefore, the Oil Company has claimed damages from the date of last calibration till the date of checking. The petitioner is responsible for proper distribution of public property. He, as the trustee of public property, was duty bound to ensure that the public property entrusted with him is delivered safely and as per the quantity received by him. The learned Single Bench in M/s Nanak Oil Carrier's case (supra) has observed that since the petitioner is discharging the public duty, he is rightly made responsible for the loss suffered. It was held to the following effect:

> "……The guideline that is issued is not in my view, a whimsical one, but it is to protect public property. The discipline which is sought is brought, if there is a deliberate act of tampering, then the punishment ought to be severe, commensurate with the mischief that is sought to be perpetrated. The guidelines which incorporated a punishment of blacklisting of all the TTs accords with the gravity of the deviance and I will not find that I can relieve the petitioner of the consequences of the wrong doing and I will find no reason for interfering with the order which is impugned in the writ petition."

We entirely agree with the findings recorded by the learned Single Bench in the aforesaid case that the petitioner, who has been found guilty of a misconduct, is not entitled to say that the punishment should be proportionate. Even in terms of the Wednesbury principle of reasonableness, this Court in exercise of its power of judicial review cannot return a finding that the punishment or penalty imposed is disproportionate. The petitioner, as a custodian of the public property, was expected to show utmost diligence. The penalty, in the present case, may be a deterrent for other transporters to ensure complete delivery of the petroleum products. Therefore, we do not find any ground to interfere in the matter of penalty or the fact that there is any violations of the Guidelines.

Though learned counsel for the petitioner argued that it was the revised Guidelines, which have been pressed to raise the demand of over Rs.2 crores, but the fact remains that such revised Guidelines have not been actually pressed by the respondents against the petitioner. Even the unrevised Guidelines, which have been reproduced above, empower the respondents to impose penalty / punishment of kind, which has been imposed upon the petitioner. Though the impugned order does mention that the penalty is being imposed as per the revised Guidelines, but that fact alone will not make the impugned order as vitiated in law, as even under the unrevised Guidelines, penalty can be imposed upon the petitioner.

In view of the above discussion, we do not find any illegality or irregularity in the impugned orders, which may warrant any interference by this Court. Consequently, the present writ petition is dismissed.

[HEMANT GUPTA]
JUDGE

11.03.2015
Vimal

[LISA GILL]
JUDGE